



**OFFICE OF OCEANIC AND ATMOSPHERIC  
RESEARCH**

**INTERAGENCY AND OTHER SPECIAL AGREEMENTS  
USER MANUAL**

**INCLUDING  
JOINT PROJECT AGREEMENTS  
ECONOMY ACT AGREEMENTS  
INTERGOVERNMENTAL COOPERATION ACT AGREEMENTS  
AND  
OTHER AGREEMENTS  
INVOLVING REIMBURSABLE WORK**

August 2002

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## FOREWORD

# Office of Oceanic and Atmospheric Research

Where Science Comes to Life

The Office of Oceanic and Atmospheric Research (OAR) or "NOAA Research" is a partnership with NOAA's National Weather Service, National Ocean Service, National Environmental Satellite, Data and Information Service and National Marine Fisheries Service as the research and development organization. The research and development work results in better weather forecasts, longer warnings for natural disasters, and an overall greater understanding of our oceans, climate, and atmosphere.

Our responsibility is to work towards better management and through research. NOAA Research explores the facets and trends of our future. Our research plays a key role in facing the challenges and our natural surroundings.

A decade ago, it would have been difficult for NOAA Research in new technologies, better and sustainability. Today, NOAA Research is completing the NOAA and environmental stewardship by providing scientific infusion to the rest of the enabling NOAA as brokers of independent scientific knowledge. The keys to success are our talented and dedicated federal institutions, and constituent groups.

### Who We Are and What We Do

As the primary research and development organization within NOAA, we study the Earth and atmosphere from the surface of the sun to the depths of the ocean. Our role within NOAA is to provide products and services that describe and predict changes in NOAA Research results allow decision makers to make loss of human life and conserve and manage natural resources while maintaining. We conduct research in three major areas: climate; weather and air quality; Great Lakes resources.

OAR conducts a portion of its business through partnerships with state and local governments, governmental organizations, other Federal agencies and non-Federal organizations have contracted services from OAR Program Offices or Laboratories. Interagency and other special agreements may provide needed services, or coordinate programs to optimize the benefits from provide needed services, or These agreements establish the terms of the relationship so that the similar or complementary programs. Written agreements that clearly of each party can contribute to more effective between the parties.

## **PART 1. - OVERVIEW**

### **Section A.    General Information**

A.01.    **Purpose and Scope.** This User Manual establishes internal OAR policy and procedures and assigns responsibilities for the drafting, review, clearance and approval, and monitoring of interagency and other special agreements entered into by OAR organizational units. The guidance contained herein applies to all OAR organizational units<sup>1</sup> involved in reimbursable work and unfunded relationships with other entities as set forth in the Policy section (Section A.02 ) and performed under the authority of the Economy Act of 1932, the Intergovernmental Cooperation Act, the Department s Joint Project Authority, the Federal Technology Transfer Act of 1986, or other appropriate legal authority. This document is for the review and clearance of Memoranda of Understanding/Agreement (MOU/A) and Interagency Agreements (IA) between the Office of Oceanic and Atmospheric Research (OAR), National Oceanic Atmospheric Administration (NOAA), Department of Commerce (DOC), and other entities. It also provides sample formats for Joint Project Agreements and Other Agreements, sample acceptance of sponsored work summary sheets for all agreement types, a checklist to be used when preparing MOU/As and Interagency Agreements, a project code request form, transmittal memoranda, waiver request memoranda, and Standardized Labor Distribution Worksheet Procedures.

This document does not apply to Federal procurement contracts, grant, or cooperative agreements (to include OAR's Joint Institutes). It also does not apply to (1) Interagency/Inter-governmental Personnel Agreements, which are addressed in personnel regulations; (2) Cooperative Research and Development Agreements (CRADAs), which are governed by the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 201-103, (3) International Agreements, which are covered in DAO 218-4, Treaties and Other International Agreements, and (4) Customer Service Agreements (CSAs) entered into in accordance with the Commerce Information Technology Solutions (COMMITTS) Program. The COMMITTS Program is the preferred source for fulfilling the agency Information Technology (IT) requirements.

Although CRADAs and International Agreements are not covered in this manual, OAR Laboratories, Program or Staff Office Directors should submit CRADAs and International Agreements to OAR s Office of Management and Information for tracking purposes.

A.02.    **Policy.** In furthering its programs, OAR becomes involved with other entities, including international organizations; foreign, Federal, State, tribal, and local governments; institutions of higher education; and other public and private organizations. This cooperation is consistent with the need to carry out effectively and efficiently OAR s authorized programs and

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1/ OAR Headquarters; OAR Research Laboratories; Office of Sea Grant; Office of Global Programs (OGP); National Undersea Research Program (NURP); and the Office of Research and Technology Applications (ORTA).

the general policies of the Federal Government.

Interagency and other special agreements are some of the methods used by Parties entering into a relationship to formally agree to share information, provide needed services, or coordinate their programs to optimize the benefits from each party's efforts. Agreements are the mechanisms to establish the terms of the relationship so that the greatest return is realized from similar or complementary programs. Written agreements should be properly developed, reviewed, and approved in order to formalize relationships with other parties. Informal arrangements should be avoided at all costs.

Prior to performing work for obtaining goods or services from, sponsors outside an OAR operating unit, a written agreement between the parties documenting the arrangement must be reviewed and cleared as set forth in Part IV of this User Manual. Reviews ensure that the agreements are in the proper format, reflect the appropriate legal and programmatic authorities, are consistent with DOC and NOAA/OAR policies, and do not violate any laws. Reimbursable work will be accepted only if it can be performed without adversely affecting regular OAR programs and the following additional conditions are met:

1. The task cannot be performed economically by the requesting agency with its own facilities or by government-wide service agencies,
2. The performance of the task by OAR is in the best interest of the Federal Government, will serve the public interest, and is consistent with Department programs.
3. It can be performed by OAR more effectively than by the private sector because of OAR's unique expertise, and performance of the service would not be considered to be in competition with private enterprise.
4. The results of the service will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity.

It is OAR's policy to carefully review all unauthorized agreements entered into by Program/ Staff Office or /Laboratory personnel. An unauthorized agreement is an arrangement or relationship that is entered into by an unauthorized OAR employee or one signed by an authorized OAR employee without benefit of OAR management and NOAA-OGC or DOC-OGC clearance review. Procedures for ratifying an unauthorized agreement are found in Part 5., Section D, Unauthorized Agreements.

**A.03. Applicability.** This User Manual applies to all OAR Program/Staff Offices, Laboratories and field operating units in their review, approval, and administration of interagency and other special agreements. It is for internal use only by OAR personnel and does not create any rights or liabilities with respect to the public or any third party. This User Manual supplements DOC/NOAA guidance, administrative orders, or directives. Should disagreements or inconsistencies arise on the interpretations of this Manual and the DOC/NOAA guidance or directives, the DOC or NOAA guidance will prevail.

This Manual addresses unique programmatic requirements and applies statutory requirements and regulations unique to NOAA/OAR. Substantive changes or revisions (e.g., corrections or updates) to the Manual may be developed and issued by OAR Headquarters. Amendments or revisions to this Manual will be coordinated with the Office of Inspector General (OIG), the NOAA Office of General Counsel (NOAA-OGC), the DOC Office of General Counsel (DOC-OGC), and the Office of Executive Assistance Management (OEAM) for review and comment.

Any request for waivers and/or deviations from the requirements of this Manual must be submitted in writing to the Assistant Administrator, OAR through the Director OMI, by the OAR Program/Staff Office and Laboratory Directors in accordance with Part 5., Section C, General Requirements for Requesting Waivers, of this Manual. The waiver or deviation request must include a full explanation for the request and justification for the deviation or waiver.

A.04. **References.** Appendix A lists published Government-wide documents relating to interagency and other special agreements.

A.05. **Definitions.** Appendix B defines terms which are unique, technical, or subject to variable definitions.



## **Section B.     Responsibilities**

To ensure sound management in the administration of interagency and other special agreements, the following responsibilities are assigned to the following officials.

**B.01.     Assistant Administrator (AA).** The AA or his designee is responsible for the following actions:

- a. Serves as the senior official for policy guidance, direction, and coordination with OAR, NOAA, and DOC operating units on matters relating to interagency and other special agreements;
- b. Ensures that specific responsibilities of OAR personnel involved in the preparation, review and clearance and approval processes of interagency and other special agreements are clearly defined in job descriptions and performance plans of those individuals;
- c. Serves as the ratifying official for all unauthorized agreements within OAR. *[See Part 5., Section D, Ratifying Unauthorized Agreements. ]*

**B.02.     Director, Office of Management & Information (OMI).** The Director is delegated the authority to develop, issue, and oversee implementation of policies and procedures for the administration of all agreements covered by this User Manual. The Director is responsible for the following actions:

- a. Directs and implements the OAR interagency and other special agreements program;
- b. Issues and provides guidance, interpretations, and technical assistance on OAR policy and procedures for the development and administration of agreements cited herein. Ensures that procedures explicitly state the responsibilities of offices within OAR, the minimum path of review and approval, and any applicable thresholds for review;
- c. Assures that OAR s Program Offices, Laboratories and field operating units establish internal review processes and comply with this Manual and other written guidance on the procedures for agreements;
- d. Maintains this User Manual and notifies appropriate OAR Program/Staff offices and operating units of changes and revisions to OAR s policy and procedures;
- e. Oversees and maintains the OAR Financial Data Management System Database, Reimbursable Operating Unit module. This is a module of OAR s FDMS that tracks and maintains information about OAR s reimbursable agreements. The module tracks the participating organizations/Parties, project title, legal authority, type of agreement, and funding

information, period of performance, review date, contact point, and other essential data;

f. Processes requests for waivers to the provisions of this manual, as permitted by governing statutes and regulations, and notifies in a timely manner the requester of the decision to approve or deny the request. If a waiver is denied, a written explanation will be provided to the requester; *[See Part 5., Section D, Requesting Waivers.]*

g. Ensures that a central depository for interagency and other special agreements is established and maintained by each OAR Program Office; the Field Services Division Office in Silver Spring, Maryland, for the NOAA Research Laboratories; and the OAR Headquarters Office;

h. Participates in meetings convened by the DOC, Office of Executive Assistance Management (OEAM), on policy and procedures concerning agreements, and reports to appropriate management officials within OAR, NOAA, and DOC on any issues affecting the use of agreements;

**B.03. OAR Liaison for Agreements.** The OAR Liaison for interagency and other special agreements is the Management, and Organizational Development Team. This team reports to OAR's Director, Office of Management & Information (OMI), and is located at OAR Headquarters in Silver Spring, Maryland. This team is responsible for the following actions:

a. Serves as the primary Point of Contact (POC) to OAR management and staff personnel on all matters related to all types of agreements covered by this User Manual;

b. Obtains NOAA-OGC guidance or DOC-OGC clearance, prepares all related approval documents, and distributes cleared documents to interested Parties (e.g., the originating office and other OAR staff elements);

c. Conducts status follow-up with NOAA-OGC and/or DOC-OGC as appropriate for guidance and/or clearance to OAR Program/Staff Offices /Laboratories and field operating units;

d. Ensures that a provision requiring advance funding is in MOU/A(s) if required by the applicable legal authority(ies) or NOAA Budget policy;

e. Ensures that the NOAA-OGC and/or DOC-OGC has been contacted if there is any question whether the MOU/A violates a law (e.g. the Antideficiency Act, an Appropriation, or the Purpose Statute), or if a waiver of fees is contemplated;

f. Ensures that all International Agreements are coordinated with the International Activities Staff;

g. Conducts Management control reviews of OAR Program/Staff Offices and

Laboratories to evaluate compliance with policies and procedures on interagency and other special agreements;

h. Provides OAR Program, Staff or Laboratory Directors with the original of all signed MOU/As and IAs.

**B.04. Program and Staff Office Directors.** OAR Program and Staff Office Directors are responsible for the following actions:

a. Maintain internal Management Control (MC) procedures that comply with existing OAR policy and procedures set forth in this Manual and the DOC Internal Control Handbook, issued Summer 1989, and other references listed in Appendix A;

b. Ensures that appropriate staff members are properly trained and understand the documentation, review, and clearance requirements for interagency and other special agreements;

c. Ensures that appropriate program and staff personnel fully comply with statutory and regulatory requirements on interagency and other special agreements, including OAR policy procedural guidelines set forth in this User Manual;

d. Ensures that proposed agreements are forwarded on a timely basis;

e. Ensures that all MOU/As and IAs are justified as appropriate undertakings and cite the applicable legal authority(ies) for entering into the agreement;

f. Ensures that a provision requiring advance funding is in the MOU/As for all non-Federal agreements unless a waiver is obtained;

g. Ensures that full cost recovery is achieved in User Charge Agreements in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996 by the Office of Finance and Administration, unless a waiver is obtained; (See OAR Attachment for a sample of the worksheet);

h. Ensures that User Charges/Fees Agreements include budget breakouts of estimated total project costs including direct labor and the appropriate overhead rate as determined by the NOAA Office of Finance and Administration;

i. Ensures that User Charges/Fees Agreements lasting more than one year include estimated funding for each of the subsequent years;

j. Ensures that Joint Project Agreement MOU/As include appropriate documentation and separate budget breakouts of all costs contributed, including in-kind contributions, by OAR

and the partner organization(s) to demonstrate equity;

k. Ensures that Economy Act MOU/As contain requisite determinations and findings as set forth in Federal Acquisition Regulations (FAR), 48 CFR 17.500;

l. Ensures that MOU/As with extended life provision (longer than three years) contain a provision for review at least once every three years to determine whether they should be revised, renewed, or canceled;

m. Ensures that agreements with other countries have obtained all required approvals (certain international agreements require approval by the Department of State);

n. The Program Directors: (e.g. National Sea Grant College Program) Serve as approving and/or signatory official as set forth in the NOAA Budget Reimbursable Handbook, Chapter 2-03, and the OAR Delegations of Authority. *[See Part 4. , Section C, Executing the Agreement - Approval and Signature Authorities. ]*

**B.05. Laboratory Directors.** OAR Laboratory Directors are responsible for the following actions:

a. Maintains internal Management Control (MC) procedures that comply with existing OAR policy and procedures set forth in this Manual and the DOC Internal Control Handbook, issued Summer 1989, and other references listed in Appendix A;.

b. Ensures that appropriate staff members are properly trained and understand the documentation, review, and clearance requirements for interagency and other special agreements;

c. Ensures that appropriate program and staff personnel fully comply with statutory and regulatory requirements on interagency and other special agreements, including OAR policy procedural guidelines set forth in this manual;

d. Ensures that proposed agreements are forwarded on a timely basis;

e. Ensures that all MOU/As and IAs are justified as appropriate undertakings and cite the applicable legal authority(ies) for entering into the agreement;

f. Ensures that a provision requiring advance funding is in the MOU/As for all non-Federal agreements unless a waiver is obtained;

g. Ensures that full cost recovery is achieved in User Charge Agreements in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996 by the Office of Finance and Administration, unless a waiver is obtained. (See OAR

Attachment for a sample of the worksheet);

h. Ensures that User Charges/Fees Agreements include budget breakouts of estimated total project costs including direct labor and the appropriate overhead rate as determined by the NOAA Office of Finance and Administration;

i. Ensures that User Charges/Fees Agreements lasting more than one year include estimated funding for each of the subsequent years;

j. Ensures that Joint Project Agreement MOU/As include appropriate documentation and separate budget breakouts of all costs contributed, including in-kind contributions, by OAR and the partner organization(s) to demonstrate equity;

k. Ensures that Economy Act MOU/As contain requisite determinations and findings as set forth in Federal Acquisition Regulations (FAR), 48 CFR 17.500;

l. Ensures that MOU/As with extended life provision (longer than three years) contain a provision for review at least once every three years to determine whether they should be revised, renewed, or canceled;

m. Ensures that agreements with other countries have obtained all required approvals (certain international agreements require approval by the Department of State);

n. Laboratory Directors: Serve as approving and/or signatory officials as set forth in the NOAA Budget Reimbursable Handbook, Chapter 2-03, and when delegated in the OAR Delegations of Authority. *[See Part 4. , Section C, Executing the Agreement - Approval and Signature Authorities. ]*

**B.06. Project Officer.** The Project Officer is responsible for the following actions:

a. Serves as the primary individual from a OAR Program/Staff Office/or Laboratory who negotiates and develops an agreement and any amendments thereto;

b. Conducts advance planning in accordance with this Manual before developing and drafting the agreement, to include coordination meetings with the other Party or Partner, Program Office or Laboratory Administrative staff, Budget Analysts , OGC attorney, Approving Official, and other OAR staff elements, as applicable, to identify the responsibilities of each Party or Partner;

c. Prepares and develops draft agreements in accordance with this Manual;

d. Briefs the approving/signatory official and other appropriate officials, as necessary;

e. Ensures that each agreement cites the proper legal authority, that the file has the necessary documentation and justifications, and that the agreement has received the proper level of legal and/or other required clearances, including obtaining copies of signed Economy Act D&F from a requesting Federal agency when OAR is providing the goods or services (i.e., Receivable Agreements);

f. Provides OAR/OMI certified or original signature copies of all executed interagency and other special agreements, including annexes, amendments or modifications thereto, and notices of termination, including supporting documentation;

g. Monitors performance and progress under the agreement, including tracking all relevant costs (i.e., direct labor, equipment, supplies, travel, and the proper overhead rate) for each reimbursable agreement;

h. Maintains a working file for each agreement, including supporting documentation. Files can include a copy of the final agreement, any written justifications, clearances, waivers, budget and financial information for reimbursable agreements, and other supporting documentation as appropriate.

**B.07. NOAA Office of General Counsel (NOAA-OGC).** OAR Program/Staff Offices, Laboratory and field operating units should consult with the NOAA OGC before entering into agreements, particularly those agreements that invoke NOAA-unique legal authorities. The NOAA-OGC and his staff attorneys are responsible for the following actions:

a. Work with the DOC-OGC to resolve any legal issues regarding the agreement;

b. Provide advice and guidance to OAR Project Officers, Program/Staff Office or Laboratory Directors, or Approving Officials on relevant statutory authorities under which OAR Program or Offices can enter into agreements;

c. Upon request, provide guidance and training to OAR Project Officers, Program/Staff Office or Laboratory Directors, or Approving Officials on relevant statutory authorities under which OAR Program or Offices can enter into agreements.

**B.08. DOC Office of General Counsel (DOC-OGC).** OAR Program/Staff Offices and Laboratories should consult with the appropriate OGC Division (i.e., General Law Division) before entering into all agreements that invoke Departmental-wide or general law as the legal authority (e.g., the Economy Act, 31 U.S.C. § 1535, the DOC-wide Joint Project Authority, (15 U.S.C. § 1525 second paragraph), or the Intergovernmental Cooperation Act, (16 U.S.C. § 6505). The DOC-OGC is responsible for the following actions:

a. Serves as the final clearance authority for all agreements and amendments;

b. Verifies that the originating OAR Program/Staff Office selected the correct legal instrument and ensures that the agreement meets the following criteria: (1) the agreement is in compliance with applicable law; (2) the agreement is appropriate under a specific legislative authority; and (3) the agreement does not include unacceptable terms.

**B.09. The Administrative Officer.** The Administrative Officers are responsible for the following actions:

- a. Ensures that sufficient funds are available to enter into an agreement; reserves the funds as necessary, and provides written confirmation of the reservation of funds;
- b. Approves the receipt of reimbursements/advances from a sponsoring agency;
- c. Reviews agreement budgets and documentation for the budgets to make sure they are consistent with NOAA/DOC accounting and budget standards;
- d. Assists the Project Officer and/or the Program/Staff Office Director in developing budgets for proposed agreements, as requested;
- e. Establishes and maintains contact with the budget office from each Party to the agreement to ensure financial responsibility; works with each Party to the agreement to amend and resolve any budget issues related to the agreement;
- f. Requests and disseminates reimbursable task numbers for reimbursable agreements, as appropriate, after they have been cleared;
- g. Reviews agreements and related documents to ensure compliance with policies and procedures related to such agreements;
- h. Ensures that a provision requiring advance funding is in MOU/A(s) if required by the applicable legal authority(ies) or NOAA Budget policy;
- i. Forwards appropriate material to the Management, and Organizational, Development team to obtain the Office of General Counsel clearance; and prepares all related approval documents and distributing appropriate copies to interested parties, *e.g.*, the agreement originating office and the partner organization;
- j. Completes the Reimbursable Task Plan Transmittal form prior to forwarding material to Silver Spring staffs.

**B.10. The Program Office Administrative Staff.** The Program Office Administrative Staff persons are responsible for the following actions:

- a. Ensures that sufficient funds are available to enter into an agreement; reserves the funds as necessary, and provides written confirmation of the reservation of funds;
- b. Approves the receipt of reimbursements/advances from a sponsoring agency;
- c. Reviews agreement budgets and documentation for the budgets to make sure they are consistent with NOAA/DOC accounting and budget standards;
- d. Assists the Project Officer and/or the Program/Staff Office Director in developing budgets for proposed agreements, as requested;
- e. Establishes and maintains contact with the budget office from each Party to the agreement to ensure financial responsibility; works with each Party to the agreement to amend and resolve any budget issues related to the agreement;
- f. Requests and disseminates reimbursable task numbers for reimbursable agreements, as appropriate, after they have been cleared;
- g. Reviews agreements and related documents to ensure compliance with policies and procedures related to such agreements;
- h. Ensures that a provision requiring advance funding is in MOU/A(s) if required by the applicable legal authority(ies) or NOAA Budget policy;
- i. Forwards appropriate material to the Management, and Organizational, Development team to obtain the Office of General Counsel clearance; and prepares all related approval documents and distributing appropriate copies to interested parties, *e.g.*, the agreement originating office and the partner organization;
- j. Maintains a central depository file for such agreements and tracking system that includes project title, parties, legal authority, type of agreement, funding information, period of performance, review date, contact point.

**B.11. The Field Resources Team.** The Field Resources Team in Silver Spring Maryland are responsible for the following actions:

- a. Ensures that sufficient funds are available to enter into an agreement; reserves the funds as necessary, and provides written confirmation of the reservation of funds;
- b. Approves the receipt of reimbursements/advances from a sponsoring agency;
- c. Reviews agreement budgets and documentation for the budgets to make sure they



are consistent with NOAA/DOC accounting and budget standards;

d. Assists the Project Officer and/or the Program/Staff Office Director in developing budgets for proposed agreements, as requested;

e. Establishes and maintains contact with the budget office from each Party to the agreement to ensure financial responsibility; works with each Party to the agreement to amend and resolve any budget issues related to the agreement;

f. Requests and disseminates reimbursable task numbers for reimbursable agreements, as appropriate, after they have been cleared;

g. Reviews agreements and related documents to ensure compliance with policies and procedures related to such agreements;

h. Ensures that a provision requiring advance funding is in MOU/A(s) if required by the applicable legal authority(ies) or NOAA Budget policy;

i. Forwards appropriate material to the Management, and Organizational, Development team to obtain the Office of General Counsel clearance; and prepares all related approval documents and distributing appropriate copies to interested parties, *e.g.*, the agreement originating office and the partner organization;

j. Maintains a central depository file for such agreements and tracking system that includes project title, parties, legal authority, type of agreement, funding information, period of performance, review date, contact point.

**B.12. Finance/Accounting Management Specialist.** The Finance/Accounting Management Specialist ensures that payments are made and received according to the conditions of the agreement. The Finance/Accounting Management Specialist may delegate to another appropriate operating unit official this position as the central point of contact for the operating unit. The Finance/Accounting Management Specialist is responsible for the following actions:

a. Provides full accounting support and financial advice;

b. Provides financial data and reports on Agreements as requested by other Federal agencies;

c. Records financial transactions associated with each agreement, as appropriate;

d. Maintains financial records for all OAR agreements, including payout, accounts receivable and advance payments.

**B.13. Approving Official - Program Office.** The Approving Official in the Program Office must be the Director or official designee. The Approving Official is responsible for the following actions:

- a. Ensures that the Project Officers responsible for specific agreements fully comply with this Manual before submitting proposed Agreements for clearance and approval;
- b. Ensures that all agreements are appropriately approved and cleared in accordance with this User Manual before signing the agreements;
- c. Ensures that all official agreement files contain copies of all required clearance and supporting documentation.

**B.14. Approving Official - OAR Headquarters.** The Approving Official in OAR Headquarters is the Deputy Assistant Administrator or designee. The Approving Official is responsible for the following actions:

- a. Can approve all of OAR s reimbursable Task agreements;
- b. Ensures that the Project Officers responsible for specific agreements fully comply with this Manual before submitting proposed Agreements to OMI's Management & Organizational Development Team for clearance and approval;
- c. Ensures that all agreements are appropriately approved and cleared in accordance with this User Manual before signing the agreements;
- d. Ensures that all official agreement files contain copies of all required clearance and supporting documentation.

**B.15 Approving Official -Waivers.** The Approving Official for Waivers is the Deputy - Chief Financial Officer in NOAA or designee. The Approving Official is responsible for the following actions:

- a. Reviews and approves waivers, when delegated specific waiver authority by the DOC Agreement Handbook or other NOAA regulations. The waivers should only be approved when properly supported by sufficient justification and documentation. Waivers should be granted only in unusual circumstances and after due consideration of the justification;
- b. Provides to DOC OEAM a list of all waivers granted, along with the justification for each waiver within 30 days of the end of each calendar quarter (March 31, June 30, September 30, and December 31);

## **PART 2. - PROCEDURES FOR PROCESSING AGREEMENTS**

### **Section A.     Advance Planning**

Advance Planning is critical to a well-written Agreement that clearly stipulates the responsibilities of each Party, and can contribute to more effective and efficient results and eliminate future misunderstandings between the Parties. The process for developing an agreement may vary as each Program/Staff Office/Laboratory may have its own organizational structure and local procedures. The following advance planning steps are recommended before entering into an agreement.

**A.01.     Be Familiar with the OAR User Manual on Interagency and Other Special Agreements.** The OAR User Manual is posted on the web in .pdf format. You can get to Intranet at:

**<http://intranet.oar.noaa.gov>**

**A.02.     Conduct Market Research.** Market research is a process used to collect, organize, analyze, present, and maintain data for the purpose of maximizing the capabilities, technology, and competitive forces of the marketplace to meet an organization's needs for supplies and services. OAR Program/Staff Offices/Laboratories are encouraged to conduct market research before entering into interagency or other special agreements with outside Parties to ensure that they are not circumventing competition requirements, as well as to ensure the best deal for the agency when negotiating an agreement. OAR should regard market research as a continuing type of market surveillance, providing the organization with valuable information concerning the current and projected availabilities of products and services, and reliable sources or partners; the extent of competition in the market; the range of product performance characteristics; market acceptability; price trends and current market prices; and the types of available distribution systems and support services.

OAR Program/Staff Offices/Laboratories should conduct market research before developing and documenting new requirements or entering into agreements. This research should be initiated as early as possible in the planning cycle, to determine whether entering into an interagency or other special agreement is the best vehicle for acquiring its specific needs versus awarding a grant, or entering into a procurement contract or cooperative agreement. It may be helpful to review the procedures in the Federal Acquisition Manual - - Part 10 Market Research when beginning market research.

**A.03.     Conduct Preliminary Discussions with Other OAR Elements.** Before undertaking serious discussions with a partner or agency, the OAR Project Officer should meet with those individuals or officials who will be involved in the development, preparation, review, clearance and approval of the proposed agreement to identify any performance, policy, budget, legal or other outstanding issues before finalizing the agreement. Generally, those individuals include the

NOAA General Counsel, the Administrative Officer, Program Office Administrative Staff person, Laboratory budget staff, Field Resources team staff, Finance Officer, and other appropriate officials. Preliminary discussions will ensure that each of those individuals clearly understands their specific responsibilities under the proposed agreement and agreed-upon milestones for specific tasks to ensure the timely processing of the agreement. For example, the OAR Liaison should be responsible for conducting a preliminary review of the draft agreement and supporting documentation to ensure compliance with documentation and clearance requirements. The Administrative Officer, the Program Office Administrative Staff person, Laboratory Budget Office staff should be responsible for reserving any operating unit funds that are to be obligated for the agreement. Also this individual will assure that proper documentation is received to certify the reservation of funds. The Finance Office should be responsible for establishing an account into which monies can be transferred from each Party to the Agreement, as appropriate. The NOAA General Counsel should be responsible for providing guidance to Program/Staff Offices on what relevant legal and programmatic authorities should be cited under which OAR and its Program/Staff Offices can enter into an agreement.

**A.04. Coordinate with Each Party to the Agreement.** The OAR Project Officer should meet, as necessary, with an authorized representative of each Party to the agreement to discuss the draft instrument and resolve any outstanding issues. Normally, after going through the aforementioned steps A.01. through A.03, the Project Officer should have a clear idea of which type of relationship or agreement will be involved. From that point on, the Project Officer should go to the first meeting with a copy of the model agreement (using one of the appropriate sample format included in this User Manual). Giving the other Party an accepted format in the beginning will facilitate the review and clearance processes at both ends. To avoid confusion and uncertainty, it is important to establish a single point of contact for each Party to the agreement for coordination purposes and resolution of issues.

## **Section B. Understanding and Choosing the Right Type of Agreement**

**B.01. Apply the Principal Purpose Test.** The following are helpful hints to assist in selecting the appropriate instrument for entering into an agreement with an outside entity.

a. **Contract.** If the principal purpose of the transaction is for the DOC to acquire goods or services for the benefit of the United States, then a procurement contract is the most appropriate mechanism to establish the relationship. The FAR provides Government-wide procedures for such contracts. NOAA contracting officers can provide guidance and support in their use.

b. **Cooperative Agreement.** A Cooperative Agreement is a legal instrument reflecting a relationship between OAR and a recipient whenever: (1) the principal purpose of the relationship is to provide financial assistance to the recipient and (2) substantial involvement is anticipated between OAR and the recipient during performance of the contemplated activity. It is a type of Government financial assistance, similar to a grant. *[See sub-paragraph d. below for a definition of grants.]*

c. **Gifts.** Gifts are not Agreements but they are another legal mechanism to work with external Parties. The DOC Secretary can accept and use gifts to aid or facilitate the work of the Department. DAO 203-9, Gifts and Bequests, sets forth the policies and procedures for the acceptance and use of gifts by the Department. Under section 4.04.a of the DAO, the Secretary must approve the acceptance of gifts valued over \$25,000. In addition, the DAO requires the approval of the CFO and Assistant Secretary for Administration before the DOC accepts any gifts which involves unusual or substantial conditions or requirements. Gifts are not negotiated the way agreements may be negotiated. Gifts cannot be accepted if the donor expects services or favors in return.

d. **Financial Assistance.** Financial Assistance applies to agreements that have as their principal purpose the transfer of a thing of value (money, property, services, etc.) to a private party in order to support or stimulate a public purpose authorized by law. Financial Assistance can only be awarded where there is express authority by law. The two most common types of Financial Assistance are Cooperative Agreements and Grants:

- **Cooperative Agreement** - Cooperative Agreement is a legal instrument reflecting a relationship between NOAA and a recipient (individual or entity) when the principal purpose of the relationship is to provide financial assistance to the recipient, and substantial involvement is anticipated between NOAA and the recipient during performance of the contemplated activity.

- **Grant.** A Grant which is similar to a Cooperative Agreement, it is a legal instrument reflecting a relationship between OAR and a recipient whenever (a) the principal purpose of the relationship is to provide financial assistance to a recipient and (b) no substantial involvement is anticipated between OAR and the recipient during the performance of the contemplated activity.

If none of the above vehicles are suitable, entering into an agreement with one or more Parties would be appropriate when funding is accepted by OAR for work to be conducted by OAR employees, contractors, or grantees. Also, OAR may transfer funds to other agencies when legal authority exists to do so and the other agency is uniquely qualified to conduct the work or provide the services to OAR. In these cases, an agreement between OAR and the other agency must be executed to support the transfer of funds. There are two generic types of agreements which may be further categorized with sub-types, and each type is discussed below.

**B.02. Understanding Generic Types of Agreements.** There are basically two types of generic agreements:

**a. Agreements with No Funding Arrangements, or General Collaborative Agreements.** These agreements simply refer to those relationships between OAR and another Party (e.g., Federal, State or local governments, universities, foreign entities or private companies) that do not involve any financial arrangements or do not involve any transfer of or acceptance of funds between the Parties to the Agreement. NOAA Line Offices, including OAR, used to refer to these relationships as MOA/MOU within NOAA. The term MOA/MOU is defined as an arrangement that is not a procurement contract, a grant or a cooperative agreement but rather a non-specific description that is commonly used to refer in general to any one of the agreements covered by this User Manual. Therefore, NOAA coined the term General Collaborative Agreements to describe those types of relationships between OAR and other agencies that do not involve any financial arrangements. Many individuals still refer to those types of relationships as Unfunded Agreements; however, that term is a misnomer and is inappropriate because any agreement where NOAA/OAR promises to do something involves funds in the sense of employee salaries, time, or office expenses. A General Collaborative Agreement is nothing more than a commitment between the Parties to cooperate on some broad-based issues of mutual interest.

**b. Agreements with Funding Arrangements.** These agreements either involve incoming funds, otherwise known as reimbursable or "incoming agreements," wherein OAR accepts funds for specific services rendered to the other Party, or outgoing funds, commonly referred to as "payable agreements," wherein OAR transfers funds to an outside agency or reimburses the servicing organization or agency in return for specific goods or services rendered.

**1. Reimbursable/ Incoming Agreements.** These are Agreements under which payments for services rendered are made to NOAA on a cost-reimbursable basis; therefore, the agreement must cite a statutory authority to accept funds. It is DOC policy to provide special services on a cost reimbursable basis to Federal agencies and other governmental instrumentalities (including NOAA/OAR operating units), private persons, commercial organizations and non-profit organizations only when the following conditions apply:

- (a) The services would not be considered to be in competition with

private enterprise. In the case of research activities and special studies, these would be projects that cannot be done at all or done as effectively by a private research agency because basic data, knowledge, or facilities needed to accomplish the project are available only in NOAA/OAR.

(b) The end results of the project will serve the public interest and are consistent with NOAA/OAR programs.

(c) Undertaking the project will not result in the diversion of OAR resources to the detriment of the basic programs of the operating unit.

(d) Undertaking the project will not result in controversy which will have an adverse effect upon the reputation of NOAA/OAR for impartiality and objectivity.

(e) A written agreement is entered into covering the service(s) to be performed and such agreement shall provide, unless determined otherwise for good reason shown and documented, that no exclusive proprietary interest shall accrue to the individual or group.

*For Special Studies, (See Section D of this manual, Special Studies authority is 15, U.S.C. 1525) the Agreement shall also provide that the results of special studies are the joint property of the individual group and of NOAA/OAR, and that NOAA/OAR may publish or make use of the results of studies without any obligation to the sponsor.*

(f) The Agreement is authorized by law. Examples of reimbursable agreements authorized by statutes are Economy Act Agreements, wherein OAR is the servicing agency and is providing specific goods and services to another Federal agency; Special Studies Agreements; and Intergovernmental Cooperation Act Agreements. ***(See paragraph B.03.b. below for further discussion of the most common types of Incoming Agreements authorized by law or statute.)***

Agreements which involve incoming funds are generally referred to as reimbursable agreements within NOAA/OAR and are assigned their respective Reimbursable Task Planning (RTP) numbers by the appropriate OAR Administrative Staff person, in the Program Office, or Laboratory Budget Office for tracking purposes.

**2. Agreements Involving Outgoing Funds/ Payable Agreements).** These agreements are also authorized by specific statutes and involve the transfer of NOAA/OAR funds to another Federal agency, and/or to a non-Federal entities as reimbursement for specific goods or services received by NOAA/OAR. These are agreements, otherwise referred to as payable agreements." Payable agreements are tracked by OAR but not assigned RTP numbers by the Budget Office. As with reimbursable agreements (i.e., receivable agreements), it is DOC/NOAA policy to transfer funds to other Federal agencies and other government instrumentalities (including NOAA/OAR operating units), and non-profit organizations only when the following conditions apply:

(a) The work would not be considered to be in competition with private enterprise because of the other agency's unique expertise;

(b) The results of the work will not result in controversy that will have an adverse effect on the Department's reputation for impartiality and objectivity;

(c) No exclusive proprietary interest would accrue to the other Party;

(d) The transfer of NOAA/OAR funds is in the best interest of the Federal Government;

(e) Specific legal authority exists to justify the transfer of funds. Examples of statutes that authorize NOAA/OAR to transfer funds are the Economy Act (31 U.S.C. § 1535), and statutes that apply specifically to NOAA/OAR. When in doubt as to what legal authority should be invoked in your respective agreements, the Project Officer should consult with NOAA's General Counsel Office. *(See paragraph B.03.a. below for further discussion of the most common types of Payable Agreements authorized by law or statute.)*

As discussed in the foregoing paragraph B.02. Understanding the Generic Types of Agreements, OAR Program/Staff Offices enter into specific types of agreements when there are legal and programmatic authorities to do so and those agreements may involve incoming or outgoing funds depending on the nature of the project or effort. As OAR Program/Staff Offices have numerous special authorities, it is not practicable to cover all those agreements in this Manual because they are either covered in DAO, NOAA Administrative Order (NAO), or are unique to specific OAR Program Offices. Therefore, OAR Project Officers should first consult with the OAR Liaison or NOAA legal counsel to discuss the particulars of those special agreements not covered by this Manual but are authorized by special legislation. For example, Official Sponsorship Agreements and Agreements to Authorize Use of the Logo are types of special Agreements that are unique to some offices. In light of the above, only the most common types of agreements authorized by special legislation are further discussed in Part 3., Unique Requirements of Specific Agreements.

**B.03. Choose the Right Type of Agreement Authorized by Statute.** Crucial to negotiating an agreement with an outside Party is knowing from the beginning the type of agreement that should be used and the correct legal authority. Each type of agreement has different restrictions which must be considered before negotiating an Agreement. For example, if OAR intends to enter into an agreement with another Government agency under the Economy Act of 1932, as amended (31 U.S.C. § 1535), it is important to know that agreements under this authority must achieve full cost recovery; therefore, a waiver of the full cost recovery requirement is not permitted. It is critical to know agreement types and the restrictions that pertain to each type so that OAR does not enter into and negotiate an illegal relationship.

Choosing the right type of Agreement can be a complicated issue. Therefore, it is advisable to obtain guidance from legal counsel or other resources early, particularly if one is considering



entering into a relationship with an outside Party, and is unsure about the type of agreement that should be used or is unsure about restrictions that apply.

Most agreements fall into one of 3 major categories: (a) OAR Purchases from Other Parties (i.e., OAR enters into a payable agreement involving outgoing funds); (b) Other Parties acquire goods and services from OAR (i.e., OAR enters into a receivable agreement involving incoming funds); and (c) OAR enters into collaborative activities, such as joint projects. The following is general guidance designed to help in choosing the right type of agreement and the correct legal authority.

**a. OAR Purchases From Other Parties (Payable Agreements).** There are various ways or vehicles through which NOAA/OAR may purchase goods or services. In addition to purchases from the GSA or through the procurement process from the private sector, laws exist that may permit OAR to make purchases from other Federal Government agencies or major organizational units of the Department. The nature of the goods or services to be purchased will dictate the particular vehicle that may be used.

The most common way to purchase goods or services from another Federal Government agency or Federal Government organizational unit is *via* an agreement under the Economy Act of 1932, as amended (31 U.S.C. § 1535). However, a purchase from another agency is permitted under the Economy Act only if a more specific statutory authority for the purchase does not exist and if the following conditions are met: (1) amounts for the purchase are actually available, (2) the purchase is in the best interest of the Government; (3) the ordered goods or services cannot be provided by contract from a commercial enterprise (*i.e.*, the private sector), as conveniently or economically; and (4) the agency or unit to fill the order is able to provide or acquire by contract the ordered goods or services. For additional guidance for entering into an Economy Act agreement for the purchase of goods or services from another Federal agency, *see Part 3, Section A, Economy Act Agreements –Outgoing Funds."*

As stated in paragraph 2.(e) above, there are other special authorities that allow OAR to transfer funds to another Party. OAR can purchase research data from the National Science Foundation (NSF) by invoking, 42 U.S.C. § 1873(f), which authorizes other Federal agencies to transfer funds to NSF for the purpose of scientific and engineering research.

**b. Other Parties Acquire Goods and Services From OAR (Receivable Agreements).** Several authorities permit other Parties to purchase goods or services from OAR. These authorities include the Economy Act (31 U.S.C. § 1535), the Department-wide Special Studies statute (15 U.S.C. § 1525 (first paragraph), and the Intergovernmental Cooperation Act (31 U.S.C. § 6505), and other special authorities. *(See Appendix C., "Statutes that Authorize NOAA/OAR to Enter into Agreements, Transfer, and/or Accept Funds. ]*

The type of agreement you choose when others are purchasing goods or services from OAR depends on (1) the type of good or service being requested and (2) the nature of the Party that is

proposing the purchase, *i.e.*, a Federal Government agency, a State or local government agency, a private sector entity, etc. For example, if the purchase request is from another Federal agency, provided a more specific authority does not exist, the agreement might be appropriate under the Economy Act. For guidance on entering into an Economy Act when another Federal Government agency is purchasing goods or services from OAR, *see Part 3., Section B, Economy Act Agreements - Incoming Funds."*

However, if a more specific legal authority exists pursuant to which the agencies may enter the agreement, that authority must be used and if the following conditions are met: (1) amounts for the purchase are actually available, (2) the purchase is in the best interest of the Government; (3) the ordered goods or services cannot be provided by contract from a commercial enterprise (*i.e.*, the private sector), as conveniently or economically; and (4) the agency or unit to fill the order is able to provide or acquire by contract the ordered goods or services.

If the agreement is with a State or local government, the correct type might be an Intergovernmental Cooperation Act Agreement pursuant to 31 U.S.C. § 6505, which permits those State and local governments to acquire certain goods and services from the Federal Government. For additional guidance for entering into an Intergovernmental Cooperation Act Agreement, *see Part 3., Section E, Intergovernmental Cooperation Act Agreements.*

If another Party is requesting a study, the subject matter of which is within the authority of OAR, then the agreement type that should be used is an agreement pursuant to the Department's Special Studies authority, 15 U.S.C. § 1525 (first paragraph). This authority permits anyone to request from DOC (1) special studies on matters within the authority of the DOC, including preparing from its records special compilations, lists, bulletins, or reports, and (2) transcripts or copies of its studies, compilations, and other records. For additional guidance for entering into agreements under the Special Studies authority, 15 U.S.C. § 1525 (first paragraph), *see Part 3., Section D, Special Studies Agreements.*

Conveyance of special benefits to recipients, beyond those occurring to the general public, require the collection of user fees. User fees are to be collected before services are provided, unless appropriations and authority are provided in advance to allow reimbursable services. Absent statutory authority to the contrary, user fees collected by OAR must be deposited into the Treasury. Detailed coverage for User Fees can be found in Chapter 9 of the NOAA Finance Handbook. User Charges, and OMB Circular A-123, Internal Control Standards for the Federal Government (Revised). In accordance with the August 7, 2000, Pricing Policy memorandum which includes user fees, OAR Headquarters Staff will annually submit to the NOAA Finance Office through Management and Budget a listing of all special products and/or services showing the approved unit price, unit price review date, actual fee collections, and number of transactions. The Director OMI will sign an annual statement which certifies the accuracy and completeness of the information for all special product and/or services within the OAR Program/Staff Offices and Laboratories.

c. **OAR Collaborates with Other Parties.** The third most common type of special agreement is one where the Parties collaborate on an activity or project. With regard to choosing the right type of agreement for collaborative activities, this can be a particularly difficult area, and it is often very prudent to obtain legal advice early to avoid pitfalls.

The most common type of special agreement for collaborative work at DOC is one authorized under the Department's Joint Project Authority (JPA), 15 U.S.C. § 1525 (second paragraph). The Joint Project authority permits DOC operating units to enter into projects with another Party if (1) the other Party is a nonprofit, research or public organization (such as a State, or local government); (2) the project is of mutual interest to the Parties; and (3) the costs of the project are apportioned equitably. For further guidance for entering into agreements under the Joint Project authority, *see Part 3., Section C, Joint Project Agreements.*

It is important to distinguish agreements under authorities such as the Joint Project authority from agreements that are for assistance, as defined in 31 U.S.C. § 6101(3). Financial assistance is the transfer of something of value (usually funds) to a recipient in order to accomplish a public purpose of support or stimulation which is authorized by law. The most common types of financial assistance are grants and cooperative agreements. These terms are discussed in Part 2., Section B, subsection B.01., Apply the Principal Purpose Test.

Confusion between Joint Projects and Financial Assistance is common, and unfortunately, results in outside criticism of programs and delays in implementing the intended goal. The purpose of a Joint Project Agreement differs significantly from an award of financial assistance, and a joint project arrangement cannot be used to award financial assistance to an outside Party. Further, the Joint Project authority may not be used to circumvent the statutory and regulatory prerequisites, for either financial assistance or procurement.

A key indicator that a proposed transaction or agreement is really financial assistance is if the share of costs for a project are predominately being borne by OAR. Another key indicator is when the primary activity that OAR is undertaking is merely transferring funds to the other Party. ***[An Agreement that sets forth as OAR's main responsibility the transfer of funds to the other Party to the agreement is not a type of agreement which the Joint Project authority authorizes.]***

For guidance concerning Joint Projects, the Office of the Assistant General Counsel for Administration (AGC/Admin), General Law Division, should be contacted. For guidance concerning Financial Assistance, the Office of the Assistant General Counsel for Finance and Litigation, Federal Assistance Law Division (FALD), should be contacted.

Other legal authorities may be the basis of agreements for collaborative activities, such as 15 USC § 3701 et seq. which authorizes NOAA and OAR Laboratories to enter into CRADAs to collaborate with one or more non-Federal Parties under which the NOAA Laboratory provides personnel, services, facilities, equipment, or other resources with or without reimbursement (but

not funds) and the non-Federal Parties provide funds, personnel, services, facilities, equipment or other resources toward the conduct of specified research and development efforts consistent with the NOAA mission.

## **Section C. Drafting the Terms and Conditions of an Agreement**

To assist in developing the draft agreement, sample formats for the most common type of agreements can be found as Exhibits under the specific Agreement types described in Part 3.,

Unique Requirements of Specific Agreements, of this User Manual. The format and construction of agreements may be dependent upon several factors -- the type of agreement and internal operating procedures. In addition, the other Parties to the agreement may require specified formats (e.g., EPA Form 1610.1, Interagency Agreements, and DoD Form 1155,

Military Interdepartmental Purchase Request ) that are not identical to OAR recommended formats. For these reasons, flexibility with respect to actual format is sometimes necessary so long as the essential provisions are included in the agreement. *(Formats may vary depending upon the specific or unique requirements of each Party to the agreement.)*

C.01. **Minimum Required Information for all Agreements.** The following general information is required in all agreements entered into by OAR Program Offices, regardless of the type of agreement.

a. **Identification of all the Parties to the Agreement.** Include the name and address of each organization, the respective Project Officers, as well as a single point of contact from each Party to the agreement for coordination purposes and resolution of issues. It is important to include their respective names, titles and telephone numbers and/or email addresses to facilitate communication and coordination.

b. **Agreement or Project Title.** Include a title which briefly summarizes or describes the work to be performed under the agreement.

c. **Legal Authority.** Cite the relevant statute that authorizes NOAA/OAR to either accept or transfer funds between the Parties entering into a specific type of agreement. *(See Appendix C, Statutes that Authorize NOAA/OAR to Enter into Agreements, Transfer, and/or Accept Funds.)*

d. **Programmatic Authority.** Cite the appropriate law which authorizes the objectives of the agreement (e.g., applicable United States Code (U.S.C.) citation, Executive Order(s). Also, cite any other pertinent references, such as DOC or operating unit directives, previous agreements, correspondence, or policy memoranda. *(See Appendix C., Key NOAA/OAR Programmatic Authorities and References.)*

e. **Purpose, Scope, and Objectives of the Agreement.** Describe the purpose, scope, and objectives of the agreement. The agreement must provide a comprehensive description of the terms of the agreement. Also include general introductory information about the duties of the Parties involved. This section should make clear in all cases the basis for mutual interest between the Parties to the agreement. The relevance to NOAA/OAR program interests should be included.

f. **Responsibilities of Each Party to the Agreement.** Define the division of responsibilities and commitments of each Party as precisely as possible. Joint responsibilities should also be defined.

g. **Funding Data/Information.** Clearly identify if funds are to be committed under the agreement. The financial arrangements for all Parties to the agreement must be clearly stipulated. This includes a citation for an appropriation code particularly for Economy Act Agreements, as well as payment terms, and method of payment. If no funds are committed through the agreement, a statement should be included which makes it clear that the agreement is not an instrument which commits funds to any Party to the agreement.

h. **Period of Performance/Duration of Agreement.** Specify a start date and end date. However, this requirement may be waived by the Approving Official when appropriate. If the requirement is waived, the official agreement file must contain a suitable justification and explanation of the reason why the agreement should not specify a period for the agreement. Also, if the term of the agreement will run for over five years, a proviso for periodic review of the agreement at least once every three years should be included; *"to determine whether the Agreement needs to be revised, renewed, or canceled."*

i. **Provisions for Future Amendments/Modifications, or Termination.** Include provisions for amending the agreement through mutual written consent of the Parties. An agreement may also be amended to extend the period of performance to allow the completion of the project or activities set forth in the agreement. An agreement may not be amended to add "new work" that is outside the scope of the original SOW. *[See Part 5., Section B.01, Processing Amendments/Modifications. ]*

Include a provision for either party to terminate the agreement by providing 30 or 60 days written notice to the other Party.

j. **Method for Settlement of Disputes.** Include provisions for resolution of disagreements between the Parties. *[Suggested language is included in each of the sample Agreement formats found in this User Manual.]*

l. **Appropriate Approving Signature Blocks.** Include the signature line, name, title, address, and date of signature for each approving official. In order to be valid, all OAR interagency or other special agreements must include a signature of the approving officials authorized to bind the Parties to the Agreement.

C.02. **Optional Provisions.** Each agreement may include applicable terms and conditions. The following items should be considered for possible inclusion, as applicable in agreements. As not all items are appropriate for all situations, discretion must be used when preparing an agreement. The following provisions or information may be included in agreements, depending upon the nature of the agreement.

**a. Delegations of Authority, Channels, and Protocols for Working Relationships, and Liaisons, as Applicable.**

**b. Administrative Regulations, Policies, and Procedures Applicable to the Work to be Conducted under the Agreement** (e.g., travel or property management requirements, the Paperwork Reduction Act, or the Freedom of Information Act, etc.).

**c. Guidelines for the Release of Technical and Public Information Regarding the Project, Including Rights for Data Access and Use.**

**d. Liability Issues.** Liability may apply to projects involving flight of foreign-provided hardware on aircraft, balloons, rockets, satellites, and operation of U.S. equipment abroad. In addition, an agreement that involves the use of publications, business or technical information may also include indemnification language to protect NOAA/OAR and the Department from lawsuits alleging copyright violations, patent infringements, and the use or release of trade secrets. Agreement clauses may be added to provide that if such suits are brought against OAR or DOC, the other Party to the agreement will assist and cooperate in the OAR or DOC defense. OAR will not indemnify any outside Party.

**e. Specific or General Budget Information.** When appropriate, the total estimated costs and budget summaries for each Party may be required.

**f. Any Additional or Special Conditions Pertinent to the Agreement.**

## PART 3 - UNIQUE REQUIREMENTS OF SPECIFIC AGREEMENTS

### Outgoing Funds

#### Section A. Economy Act Agreements for Purchasing Goods or Services

##### A.0.1. Description and Requirements

a. **Statutory Requirements.** The Economy Act of 1932, as amended, 31 U.S.C. § 1535, permits Federal Government agencies to purchase goods or services from other Federal Government agencies or other major organizational units within the same agency. An Economy Act purchase is permitted only if: (1) amounts for the purchase are actually available, (2) the purchase is in the best interest of the Government, (3) the ordered goods or services cannot be provided by contract from a commercial enterprise, *i.e.*, the private sector, as conveniently or cheaply as could be by the Government, and (4) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services.

The Economy Act permits OAR to be the servicing agency through an agreement involving funds incoming to OAR. If OAR is the servicing agency, *see Section B, Economy Act Agreements for Providing Goods or Services--Funds Incoming to OAR.*

b. **Regulatory Requirements.** The FAR, 48 CFR 17.5 provides implementing guidance for Interagency Acquisitions pursuant to the Economy Act. The FAR provides that an order cannot be placed under the Economy Act when more specific statutory authority exist for the purchase from another Government agency. Purchases pursuant to the Economy Act are not exempt from the requirements of 48 CFR 7.3, Contractor Versus Government Performance. Thus, OMB Circular A-76 applies to Economy Act Agreements, and must be reviewed to ensure compliance with OMB Circular A-76. An Economy Act Agreement may not be used by an Agency to circumvent conditions and limitations imposed on the use of funds; funds transferred under this Act remain subject to their original fiscal year availability. The performing agency must charge the actual cost of providing the goods or services.

1. **Economy Act Orders.** FAR 17.504, Ordering procedures, states that Economy Act orders should include: (a) a description of the supplies or services required; (b) delivery requirements; (c) a funds citation; (d) a payment provision; and (6) acquisition authority as may be appropriate. The agreement also must include a citation to the programmatic authority pursuant to which the requesting agency is engaging in the transaction.

2. **Determination and Finding Requirements.** Each Economy Act order shall be supported by a D&F and must be prepared and approved in accordance with the FAR 17.503. The D&F shall state that: (a) use of an interagency acquisition is in the best interest of the Government; and (b) the supplies or services cannot be obtained as conveniently or



economically by contracting directly with a private source.

If the Economy Act order requires contracting action by the servicing agency, the D&F shall also include a statement that at least one of the following circumstances is applicable. (a) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services; (b) the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or ©) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

The Project Officer shall assist the contracting officer in preparing the required D&F. The D&F must be approved and signed by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the Senior Procurement Executive of the requesting agency. ***/See Exhibit A-2, Sample Economy Act Determination and Findings. /***

3. **Payment.** An Economy Act Agreement must achieve full cost recovery; a waiver of this full cost recovery requirement is not permitted under any circumstance. Full cost recovery includes direct and indirect costs. Further, the Economy Act does not allow a Federal agency or unit to receive a profit when providing goods or services. Payment must be in advance or upon providing the goods or services ordered. Proper adjustments of amounts paid in advance shall be made as agreed to by the Heads of the Agencies or operating units on the basis of the actual cost of goods or services provided. Funds transferred under this act remain subject to their original fiscal year availability.

An order placed or agreement made under the Economy Act obligates an appropriation of the ordering agency or operating unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations before the end of the period of availability of the appropriation, in: (I) providing goods or services, or (ii) making an authorized contract with another person to provide the requested goods or services. **NOTE:** An agency cannot transfer funds to OAR to do something that the first agency cannot legally do for itself.

**4. OMB Circular A-76 Coordination. *(NOTE: this is proposed coverage pending further instructions from DOC or NOAA HQ persons responsible for OMB Cir. A-76 issues.)*** OMB Circular A-76, Performance of Commercial Activities establishes Federal policy regarding the performance of commercial activities. In recognition of the fundamental importance of private enterprise and individual initiative, OMB-A-76 specifies that the general policy of the U.S. Government is to rely on the private sector to supply the products and services it requires. The revised Circular was promulgated to ensure enhanced efficiency in providing these goods and services and to establish techniques to apply the Circular to all Federal agencies. Its reach encompasses scientific and technical research and development activities including those conducted by one Federal agency for another with transferred funds.

For purposes of this Circular, a commercial activity is one carried out by a Federal executive agency and which provides a product or service which could be obtained from a commercial source. A commercial activity also may be a type of work that is separable from other functions or activities and is suitable for performance by contract. The Supplement to the Circular sets forth procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

For purposes of A-76 coordination on Economy Act Agreements involving outgoing funds, the OAR Program/Staff Office will coordinate compliance with the Circular and its Supplement with the cognizant contracting officer servicing the initiating OAR Program/Staff Office. The contracting officers from NOAA Procurement or Administrative Support Center (ASC) (e.g., EASC, WASC, CASC etc.), in conjunction with the NOAA A-76 or OAR s A-76 coordinator, **[ it is not known whether this function will be delegated to NOAA Line Offices ]** will be responsible for determining compliance with the OMB Circular before signing the Economy Act D&F. The Economy Act D&F has to warrant that the use of an interagency acquisition is in the best interest of the Government and that the requesting agency (meaning the DOC operating unit) cannot obtain the supplies or services by contracting directly with a commercial or private enterprise. From the NOAA program office s perspective, many of their respective missions are mandated by statutes and such functions and responsibilities are unique to NOAA/OAR. As such, the Circular may not be applicable to many proposed agreements.

#### **A.0.2. \_\_Review and Clearance Procedures**

**a. Submitting the Proposed Agreement for Review and Approval. *[Follow the review and clearance procedures set forth in Part 4., REVIEW AND CLEARANCE PROCEDURES. ]***

b. **Using the Economy Act Agreement Checklist.** To ensure the completeness and accuracy of the agreement file, the Project Officer should review the draft agreement using ***Exhibit A-3, Economy Act Agreement Checklist***, before submitting the proposed Economy Act Agreement file to the Office of the Director OMI for review and clearance.

c. **Preparing the Transmittal Memorandum.** All new Economy Act Agreements, and amendments or modifications thereto, must be forwarded to Management and Organizational Development Team, *via* a transmittal memorandum. The transmittal memorandum for the Economy Act Agreement should be addressed and sent to the Management and Organizational Development Team by the OAR Program/ Staff/ Laboratory Director initiating the agreement. The Director OMI, is responsible for obtaining legal clearance of all Economy Act Agreements, amendments, and renewals thereto.

1. **Executive Summary.** The transmittal memorandum serves as an Executive Summary and should include the following statements: (a) the services/tasks to be provided by the servicing Federal agency cannot be performed economically by OAR with its own facilities or by Government-wide service agencies (e.g., Government Printing Office or the General Services Administration); (b) the performance of the tasks by the servicing agency is in the best interest of the Government; (c) the services/tasks to be provided by the servicing agency would not be considered in competition with the private sector; (d) the undertaking will not divert resources to the detriment of NOAA/OAR programs; (e) the services/tasks to be provided will not result in controversy that will adversely impact the Department; and (f) exclusive proprietary interests will not accrue to the other Party.

2. **Additional Information to Aid in the Clearance Process.** The transmittal memorandum should also include the following additional information: (a) OAR s Funding Program Office; (b) an OAR Organization Code; (c) Amount of Outgoing Funds; (d) OAR s Legal Authority; (e) OAR s Programmatic Authority; (f) Servicing Federal Agency; (g) Servicing Federal Agency s Programmatic Authority; (h) Subject/Key Word; (I) New/Existing Agreement; (j) Amendment No. and the OAR Agreement Code and/or Effective Date of date Underlying Agreement, if applicable; (k) Period of Performance; (l) Technical Point of Contact and Telephone Number, and (m) Administrative Point of Contact and Telephone Number. ***[See Exhibit A-4, Sample Economy Act Agreement Transmittal Memorandum - Outgoing Funds.***

A.0.3. **Approval and Signature Authority.** *[Follow the approval and signature authority set forth in Part 4., Section C.01., Approval/Signature Authorities for Agreements Involving Outgoing Funds (Payable Agreements). ]*

**EXHIBIT A-1**

**MODEL ECONOMY ACT AGREEMENT - OUTGOING FUNDS**

**AN INTERAGENCY AGREEMENT**

**PURSUANT TO**

**TITLE 31 U.S.C. § 1535**

**THROUGH WHICH**

*[Name of OAR Program/Staff Office/Laboratory ]*

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**U.S. DEPARTMENT OF COMMERCE**

**IS PURCHASING**

*[State what you are purchasing]*

**FROM**

*[Name of servicing Federal agency]*

**OAR Agreement Code: (Number)**

*[Note: This format is for use only to order goods or services from another Federal agency.]*

## **I. PARTIES AND PURPOSE**

This Interagency Agreement is between the *[name of OAR Program/Staff Office]*, U.S. Department of Commerce (DOC) and *[name of servicing Federal agency]* through which *[name of OAR Program/Staff Office]* will pay *[name of servicing Federal agency]* for *[provide a general description of the good/service for which OAR is paying]*.

## **II. BACKGROUND**

*[Provide relevant background information which addresses why OAR (i.e., your organization) is requesting the goods/services.]*

## **III. AUTHORITIES**

A. The legal and programmatic authorities for NOAA/OAR are the Economy Act of 1932, as amended, (31 U.S.C. § 1535) and the *[Set forth OAR's authority under which it is making the purchase for goods/or services, i.e., the programmatic authority to which the purchase is related.]*.

B. *[Set forth the servicing Federal agency's programmatic authority for engaging in the types of activities contemplated under this Agreement.]*

## **IV. ECONOMY ACT FINDINGS**

As set forth in the attached D&F pursuant to 48 CFR 17.503, *[name of OAR Program/Staff Office/Laboratory]* warrants that sufficient funding amounts are available, that this Agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

*[Pursuant to 48 CFR 17.503, if the Economy Act order requires contracting action by the servicing agency, there also must be a determination that at least one of the following circumstances is applicable:]*

*(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;*

*(2) the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or*

*(3) the servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.*

*Accordingly, if the order requires such contract action, the agreement also must include a*

*statement such as: [Name of OAR Program/Staff Office] warrants [choose one of the above 3 situations which applies]. ]*

*[Name of other agency] warrants that it is able to provide or get by contract the requested services. [If the Agreement requires contracting action by the servicing agency, it must also include the following sentence: " [Name of servicing Federal agency] warrants that it has adequate statutory authority for the contractual action and will comply fully with the competition requirements of Part 6 of the Federal Acquisition Regulation as well as all other legal or regulatory requirements applicable to the contract." ]<sup>2</sup>*

## **V. TERMS AND CONDITIONS**

*[State the terms and conditions of the Agreement, i.e., what it is specifically that you are purchasing, delivery requirements, and the amount that the other Federal Agency will receive as payment. The goods/services ordered must further the mission of the Department. Orders that would divide the costs of goods or services among agencies participating in events such as conferences, etc., on a basis other than each agency paying only for what it receives are not appropriate. You should discuss such an arrangement with the General Law Division, AGC/Admin (202-482-5391) prior to drafting an Agreement. You may reference an attached Statement of work under this Section].*

## **VI. PAYMENTS/TRANSFER OF FUNDS**

*[Explain the details of how OAR will pay for the goods/services, e.g., whether payments will be monthly, quarterly, etc. or in advance if required by the servicing agency.] Suggested Language:*

The total maximum cost liability to OAR for this Agreement is \$ (specify dollar amount). Transfer of OAR funds to (*name of servicing Federal agency*) will be through the Intra-governmental Payment and Collection (IPAC ) billing on a quarterly/monthly basis. The Agency Location Code (ALC) for NOAA is 13-14-0001.

The appropriation out of which [*name of OAR operating unit*] will pay for these services is: \_\_\_\_\_ . These funds expire on [*insert the date on which the funds expire*].<sup>3</sup>

This amount will be deobligated to the extent that the servicing agency has not incurred obligations before the end of the period of availability of that appropriation.

---

<sup>2</sup> Note: if the servicing agency is not subject to the FAR, contact the General Law Division for further advice in drafting the agreement.

<sup>3</sup> However, if the funds are no year funds, state that DOC/OAR is using no year funds for the purchase.

***[NOTE: The servicing agency may ask for advance payment for all or part of the estimated costs of furnishing the supplies or services, or payment may be made after the supplies and services have been furnished. Under no circumstances will the amount paid be more than the actual costs of the goods or services.]***

This Agreement is subject to the availability of appropriated funds.

## **VII. CONTACTS**

The contacts of each Party to this Agreement are:

***[Name of OAR contact]  
[Title of OAR contact]  
[Address of OAR contact]  
[Phone number of OAR contact]  
[Fax number of OAR contact]  
[E-mail address of OAR contact]***

***[Name of servicing Federal agency's contact]  
[Title of servicing Federal agency's contact]  
[Address of servicing Federal agency's contact]  
[Phone number of servicing Federal agency's contact]  
[Fax number of servicing Federal agency's contact]  
[E-mail address of servicing Federal agency's contact]***

The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change.

## **VIII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION**

This Agreement will become effective when signed by all Parties. The Agreement will remain in effect through ***[insert date]***, unless either terminated by (1) mutual written consent, (2) 30/60 days advance written notice by either Party, or (3) completion of the operation/ terms of this Agreement.

This Agreement may be amended at any time within the scope of this instrument, extended, or renewed at any time through the written mutual consent of the Parties. ***[The Parties may also include in this section language that will allow for either Party to issue a unilateral amendment or modification to effect an administrative change (i.e., a unilateral amendment will not require the signature/acceptance of the other Party; however, see Part 5., Section C, Processing Amendments or Annexes, before adding this language).]***

***NOTE: If the Agreement will last longer than 3 years, the following sentence should be included in the Agreement: The Parties will review this Agreement at least once every three***

*years to determine whether it should be revised, renewed, or canceled. ]*

#### **IX. RESOLUTION OF DISAGREEMENTS**

Nothing herein is intended to conflict with current DOC or *[name of servicing Federal agency]* directives. If the terms of this Agreement are inconsistent with existing directives of either of the agencies entering into this Agreement, then those portions of the Agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished either by an amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of both Parties.

Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

#### **X. APPROVALS**

This Agreement is entered into and made effective as of the date later in time indicated below.

\_\_\_\_\_  
*[Signature--must be an official with  
authority to sign Economy Act Agreements]*  
*[Type name]*  
*[Type title]*  
*[Type office at NOAA/OAR ]*  
U.S. Department of Commerce  
*[Type address]*

\_\_\_\_\_  
*[Date]*

\_\_\_\_\_  
*[Signature of person who has authority to  
to commit the other Party to the Economy  
Act Agreement]*  
*[Type name]*  
*[Type title]*  
*[Type name of other Federal agency]*  
*[Type address of other Federal agency]*

\_\_\_\_\_  
*[Date]*



**SAMPLE ECONOMY ACT DETERMINATION AND FINDING**

**[Must be on a NOAA Procurement or ASC letterhead.]**

**DETERMINATION AND FINDING**

Upon the basis of the following findings and determination, made pursuant to the authority of the FAR Subpart 17.5, the effort described in the findings may be acquired by ***[name of OAR Program/Staff Office]*** from the U. S. Department of ***[name of servicing Federal Agency]***, by means of an interagency acquisition under the Economy Act of 1932, (31 U.S.C. § 1535).

**FINDINGS**

1. This portion of the D&F explains the technical basis or rationale for the Determination. (i.e, explain why and how the findings support the determination that (a) amounts are available; (b) use of an interagency acquisition is in the best interest of the Government; and ©) the supplies or services being provided by ***[name of servicing Federal agency]*** cannot be obtained as conveniently or economically by NOAA/OAR by contracting directly with a commercial or private source.
2. If the Economy Act order requires contracting action by the servicing Federal agency, also include a statement that one of the following circumstances is applicable: (a) the acquisition will appropriately be made under an existing contract of the servicing agency ***[identify the contract number, if possible]***, entered into before placement of the order, to meet the requirements of the servicing Federal agency for the same or similar supplies or services; (b) the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or ©) the servicing Federal agency is specifically authorized by law or regulation, ***[set forth the citation for the law or regulation]***, to purchase such supplies or services on behalf of other agencies.

**DETERMINATION**

Based on the foregoing findings, it is hereby determined that the following requirements of FAR 17.503 are met.

1. Use of an interagency acquisition is in the best interest of the Government.
2. The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

---

***[Type name of  
Contracting Officer,  
NOAA, EASC, WASC, MASC, KASC etc.]***

---

***[Date]***

## EXHIBIT A-3

### **ECONOMY ACT AGREEMENT CHECKLIST** **(OAR PAYABLE AGREEMENT)**

	<b><u>YES</u></b>	<b><u>NO</u></b>
1. Does the Agreement include the following:		
a. Name of OAR Program /Staff Office/Laboratory	_____	_____
b. Project Title	_____	_____
c. OAR s Legal Authority (31 U.S.C. § 1535)	_____	_____
d. OAR s Programmatic Authority	_____	_____
____e. Other Party s Programmatic Authority	_____	_____
f. Estimated Cost	_____	_____
g. Period/Duration of Agreement	_____	_____
h. Type of Other Party (Must be a Federal agency)	_____	_____
i. Reviewers Initials and Dates on Automated Transmittal/Route Slip	_____	_____
j. Signed Economy Act Determinations and Findings	_____	_____
k. Transmittal Memorandum	_____	_____
2. General Guideline(s) for Acceptance of Sponsored Work		
<u><b>All blocks must be checked:</b></u>		
Performance of the work is consistent with NOAA authorized programs and the general policies of the Federal Government.		
Performance of the work will not adversely affect regular NOAA programs.		
Performance of the work by NOAA is in the best interest of the Federal Government, but is not related to the normal functions of NOAA.		
Performance of the work by NOAA can be done more effectively than by the private sector due to NOAA s unique expertise and activities.		
3. Is the Economy Act authority being used because a more specific authority does not exist? (If a more specific legal authority for the purchase exists, the Economy Act should not be used as the basis for the Agreement.)	_____	_____
4. Does the Agreement relate the objectives to OAR s programmatic authority and to other OAR policies and goals?	_____	_____
5. Does the Agreement provide a comprehensive description of the terms to which the Parties are agreeing?	_____	_____
6. Does the Agreement provide only for supplies and services?	_____	_____
7. Does the Agreement include a provision requiring advance funding?	_____	_____
8. Does the Agreement indicate include the NOAA appropriation code out of which OAR will pay the servicing Federal agency for the goods and services?	_____	_____

	<u>YES</u>	<u>NO</u>
9. Does the Agreement identify the type of NOAA funds (e.g., one-year or no-year funds) involved and its expiration date, if applicable?	___	___
10. Does the Agreement include a budget breakout of total costs, including direct labor and the appropriate overhead/indirect rate?	___	___
11. If the Agreement is for an extended period of time, does it include a provision for review at least once every three years, to determine whether it should be revised, renewed, or canceled?	_____	_____
12. Do the signature blocks reflect the appropriate signatory/approving officials per each participating agency's delegations of authority?	___	___
13. If the action is a modification to an Agreement previously cleared by the Assistant General Counsel for Administration (AGC/ADMIN), are copies of the signed underlying Agreement, prior Amendments and clearance memorandum included in the Agreement file? (If available, include name of AGC/ADMIN staff attorney who reviewed the underlying Agreement.)	___	___
14. If the Agreement is for a longer period than the current fiscal year (FY), does the Agreement include estimated funding levels for each of the subsequent FYs, and include a provision that reads, Funding is currently available for this FY; however, performance beyond the current FY is contingent on the availability of appropriated funds?	___	___

EXHIBIT A-4

**SAMPLE TRANSMITTAL MEMORANDUM FOR  
ECONOMY ACT INTERAGENCY AGREEMENT - OUTGOING FUNDS**

MEMORANDUM FOR: Director, Office of Management and Information

FROM: *[Director, OAR Program/Staff Office/ Laboratory ]*

SUBJECT: Economy Act Agreement between the National Ocean Service and *[name of servicing Federal agency]* for the acquisition of *(program/project title)*.

Enclosed is a new Economy Act Agreement between the OAR and the *[name of servicing Federal agency]* entitled, (identify program/project title), for your review and approval, and transmittal for legal clearance. *[If the action is an amendment to an existing Agreement, state the OAR Task Code and/or NOAA Control Number for the original Agreement clearance or last amendment. Also state the name of the AGC/Admin staff attorney who reviewed the last action, if known.]*

The proposed Agreement includes a Statement of Work (and/or Proposal), a budget breakout of total project costs, and a signed copy of the Economy Act Determination and Finding.

*[If the funding relates to a contract, cooperative agreement, or grant, the memorandum should indicate this fact and provide the number assigned to the contract, cooperative agreement or grant if it exists.]*

We have determined that OAR cannot obtain the goods or services that are the subject of this Agreement more cheaply or conveniently from the private sector. We also have determined that placement of this order with *[name of servicing Federal agency]* is not in competition with private enterprise and will serve the public interest. This purchase is consistent with OAR s programs and will not result in diversion of resources to the detriment of our basic programs. Further, the results of this purchase will not result in controversy that will adversely impact the Department s reputation, and no exclusive proprietary interest will accrue to the other Party to this Agreement.

*[If the proposed Agreement is not submitted two months before the start date, provide a (1) an explanation as to why the two-month clearance processing time was not adhered to and (2) an impact assessment on the OAR program, if proposed Agreement is not cleared expeditiously by the start date.]*

The following additional information is provided to be of assistance to the clearance process:

OAR s Funding Program/Staff Office/Laboratory:

OAR s Organization Code:

Amount of Outgoing Funds: \$ *[dollar amount.]*

OAR s and Servicing Federal agency s Legal Authority: Economy Act of 1932, (31 U.S.C. § 1535) OAR s Programmatic Authority: *[statute that authorizes OAR to engage in this type of purchase or acquisition.]*

Servicing Federal Agency s Programmatic Authority: *[statute that authorizes the servicing Federal agency to engage in the types of activities contemplated under this Agreement]*

Subject/Key Word:

New/Existing Agreement:

Amendment No. and the OAR Task Code and/or Effective Date of date Underlying Agreement (if applicable):

Period of Performance:

OAR s Technical Point of Contact/Telephone No.:

OAR s Administrative Point of Contact/Telephone No.:

Should you have a technical or administrative question, please call the appropriate individual designated above.

Enclosures (3)

Proposed Economy Act Agreement

Signed Economy Act D&F

Budget Breakout

# Incoming Funds

## **Section B. Economy Act Agreements for Providing Goods or Services**

### **B.01. Description and Requirements**

a. **Statutory Requirements.** The Economy Act of 1932, as amended, 31 U.S.C. § 1535, permits Federal Government agencies to purchase goods or services from other Federal Government agencies or other major organizational units within the same agency. An Economy Act purchase is permitted only if all of the conditions are met: (1) amounts for the purchase are actually available, (2) the purchase is in the best interest of the Government, (3) the ordered goods or services cannot be provided by contract from a commercial enterprise, *i.e.*, the private sector, as conveniently or cheaply as could be by the Government, and (4) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services.

The Economy Act permits NOAA/OAR to be the requesting/ordering agency through agreements involving fund outgoing from NOAA/OAR. If NOAA/OAR is the requesting/ordering agency, *see Part 4., Section A, Economy Act Agreements for Purchasing Goods or Services - Outgoing OAR Funds.*

b. **Regulatory Requirements.** The Federal Acquisition Regulation (FAR), 48 CFR 17.5 provides implementing guidance for Economy Act Agreements in addition to the statutory requirements set forth in 31 U.S.C. § 1535. The FAR provides that an order cannot be placed under the Economy Act if a more specific statutory authority for the purchase from another Government agency exists. For example, if the purpose of the agreement is to provide goods or services related to surveying or mapping, the Economy Act should not be used, and the Parties should enter into the agreement pursuant to 31 U.S.C. § 883e, which permits other agencies to purchase such goods and services from OAR. For guidance on preparing and clearing agreements under this authority, *see Part 3., Section F, Operating Unit's Special Agreements ( 33 U.S.C. 883e ). (See also FAR Part 8., Acquisitions from Required Sources. )*

Purchases pursuant to the Economy Act are not exempt from the requirements of 48 CFR 7.3,

Contractor Versus Government Performance. Thus, OMB Circular A-76 applies to Economy Act Agreements. Therefore, for Economy Act Agreements, where OAR is the servicing agency, *i.e.*, is supplying good or services, the OAR Project Officer responsible for providing such goods or services must document the requesting agency's assurance that it has complied with the requirements of OMB Circular A-76.

An Economy Act Agreement may not be used by an Agency to circumvent conditions and limitations imposed on the use of funds; funds transferred under this Act remain subject to their original fiscal year availability. The performing agency must identify the actual cost of providing the goods or services. Undercharging or overcharging for the goods or services being provided is a circumvention of the appropriation process, and, in the case of undercharging, unfair and improper competition with the private sector may result.

1. **Economy Act Orders.** FAR 17.504, Ordering procedures, states that

Economy Act orders should include: (a) a description of the supplies or services required; (b) delivery requirements; (c) a funds citation; (d) a payment provision; and (e) acquisition authority as may be appropriate. The Agreement also must include a citation to the programmatic authority pursuant to which the requesting agency is engaging in the transaction.

**2. Determination and Finding Requirements.** Each Economy Act order shall be supported by a D&F and must be prepared and approved in accordance with the FAR 17.503 and 17.504. The D&F shall state that: (a) use of an interagency acquisition is in the best interest of the Government; and (b) the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

If the Economy Act order requires contracting action by the servicing agency, the D&F shall also include a statement that at least one of the following circumstances is applicable: (a) the acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services; (b) the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or (c) the servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

The D&F must be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head. As the servicing agency, NOAA/OAR will require the requesting Federal agency, pursuant to FAR 17.504, to furnish a copy of the signed D&F with the order. **(See Exhibit B-2, Sample Economy Act Determinations and Findings. /**

**3. Payment.** An Economy Act Agreement must achieve full cost recovery; a waiver of this full cost recovery requirement is not permitted under any circumstance. Full cost recovery includes direct and indirect costs. Further, the Economy Act does not allow a Federal agency or unit to receive a profit when providing goods or services. Payment may be in advance or upon providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustments of amounts paid in advance shall be made as agreed to by the agency head or operating units on the basis of the actual cost of goods or services provided.

An order placed or agreement made under the Economy Act obligates an appropriation of the ordering agency or operating unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations before the end of the period of availability of the appropriation, in: (a) providing goods or services, or (b) making an authorized contract with another person to provide the requested goods or services.

**4. Disposition of Receipts.** All receipts for work or services performed for other Federal agencies under the Economy Act shall be deposited to (a) to a special working fund in the case of advance payments, or (b) to the appropriation or funds against which the charges have been made pursuant to any such order, or such other fund as may be necessary until an appropriate determination can be made, in the case of payments other than advance payments.

## B.0.2. Review and Clearance Procedures

a. **Submitting the Proposed Agreement for Review and Approval.** *[Follow the review and clearance procedures set forth in Part 4., REVIEW AND CLEARANCE PROCEDURES. ]*

b. **Using the Economy Act Agreement Checklist.** To ensure the completeness and accuracy of the agreement file, the Project Officer should review the draft agreement using **Exhibit B-3, Economy Act Agreement Checklist-OAR Receivable Agreement**, before submitting the proposed Economy Act Agreement file to the Director OMI, Management and Organizational Development Team, for proper dissemination of material to insure completeness and accuracy.

c. **Preparing the Transmittal Memorandum.** All new Economy Act Agreements, amendments, or modifications thereto, must be forwarded to the Director OMI, Management and Organizational Development Team *via* a transmittal memorandum. The transmittal memorandum for the Economy Act Agreement should be addressed and sent to the Director OMI by the OAR Program/ Staff Director/or Laboratory Director initiating the agreement. The Director OMI, Management & Organizational Development Team is responsible for the proper dissemination of material and obtaining legal clearance of all Economy Act Agreements, amendments, and renewals thereto.

1. **Executive Summary.** The transmittal memorandum serves as an Executive Summary and should include the following statements: (a) that the requesting agency cannot obtain the goods/services to be provided as cheaply or conveniently by contracting directly with the private sector; (b) the purchase is in the best interest of the Government; (c) the agreement will not divert resources to the detriment of NOAA/OAR programs; (d) the agreement will not result in controversy that will adversely impact the Department; and (e) exclusive proprietary interest will not accrue to the other Party.

2. **Additional information to Aid in the Clearance Process.** The transmittal memorandum should also include the following information: (a) Name of the Funding Federal Agency; (b) Federal Agency Code, if available; (c) Amount of Incoming Funds; (d) Number of FTEs Required; (e) Requesting Federal Agency's Programmatic Authority, (f) OAR's Organization Code, (g) OAR's and Requesting Agency's Legal Authority, (h) OAR's Programmatic Authority; (i) Subject/Key Word; (j) New/Existing Agreement; (k) Amendment No. and the MOU Number or the Effective Date of the Underlying Agreement, if a OAR MOU number was not assigned; (l) Period of Performance; (m) OAR's Technical Point of Contact and Telephone Number; and (n) OAR's Administrative Point of Contact and Telephone Number. *[See Exhibit B-4, Sample Economy Act Agreement Transmittal Memorandum (Incoming Funds). ]*

B.0.3 **Approval and Signature Authority.** *[Follow the approval and signature authority set forth in Part 4., Section C.02., "Approval/Signature Authorities for Agreements Involving Incoming Funds (Receivable Agreements) or Joint Project Agreements."]*



**EXHIBIT B-1**

**MODEL ECONOMY ACT AGREEMENT - INCOMING FUNDS**

**AN INTERAGENCY AGREEMENT**

**PURSUANT TO**

**TITLE 31 U.S.C. § 1535**

**THROUGH WHICH**

*[Name of requesting Federal agency]*

**IS PURCHASING**

*[State what they are purchasing]*

**FROM**

*[Name of OAR Program/Staff Office/Laboratory ]*

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**U.S. DEPARTMENT OF COMMERCE**

**OAR Task Code:**

*[Insert the OAR Task Code number]*

*[Note: This format is for use only when another Federal agency or DOC operating unit is paying NOAA/OAR for goods or services, i.e., when NOAA/OAR is the servicing agency. The other Federal Agency may use its own format provided it complies with all of the requirements set forth in the Federal Acquisition Regulation. This format has been designed to ensure compliance with the Economy Act and the FAR. Accordingly, if the other Party does not have a standard format that is in compliance with the FAR requirements, providing this model Agreement most likely alleviate the need to have the agreement revised and, therefore, will help to shorten the time needed to have the agreement approved.]*

## **I. PARTIES AND PURPOSE**

This Interagency Agreement is between the *[name of requesting Federal agency]* and *[name of OAR Program/Staff Office/Laboratory]*, U.S. Department of Commerce (DOC), through which *[name of requesting Federal agency]* will pay *[name of OAR Program/Staff Office/Laboratory]* for *[provide a general description of the good/service for which the other Party is paying]*.

## **II. BACKGROUND**

*[Provide background information which addresses why the good/service are being requested.]*

## **III. AUTHORITIES**

A. The legal authority and programmatic authorities for NOAA/OAR are the Economy Act, 31 U.S.C. § 1535 and (*cite the programmatic authority*).

B. The programmatic authority for the requesting Federal agency is (*cite the authority under which it is making the purchase of goods or services*

## **IV. ECONOMY ACT FINDINGS**

As set forth in the attached Determinations and Findings Pursuant to 48 CFR 17.503, *[name of requesting Federal Agency]* warrants that sufficient funding amounts are available, that this Agreement is in the best interest of the United States Government, and that the services requested cannot be provided as conveniently or cheaply by a commercial enterprise.

*[Pursuant to 48 CFR 17.503, if the Economy Act order requires contracting action by the OAR, there also must be a determination that at least one of the following circumstances is applicable:*

*(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;*

*(2) the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or*

*(3) the servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.*

*Accordingly, if the order requires such contract action, the Agreement also must include a statement such as: [Name of requesting Federal agency] warrants [choose one of the above 3 situations which applies]. ]*

*[Name of OAR Program/Staff Office/Laboratory]* warrants that it is able to provide or get by contract the requested services. *[If the Agreement requires contracting action by OAR, the Agreement must also include the following sentence: NOAA/OAR warrants that it has adequate statutory authority for the contractual action and will comply fully with the competition*

requirements of Part 6 of the FAR as well as all other legal or regulatory requirements applicable to the contract.]

V. **TERMS AND CONDITIONS**

*[State the terms and conditions of the Agreement, i.e., what it is specifically that the other Federal agency is purchasing, delivery requirements, and the amount that OAR will receive as payment. You may reference an attached Statement of Work in this Section.]*

*[Orders that would divide the costs of goods or services among agencies participating in events such as conferences, etc., on a basis other than each agency paying only for what it receives are generally inappropriate. You may want to discuss such an arrangement with the General Law Division, AGC/ADMIN (202-482-5391) prior to drafting an Agreement.]*

VI. **PAYMENTS/TRANSFER OF FUNDS**

*[Explain the details of how the requesting Federal agency will pay for the goods/services, e.g., whether payments will be monthly, quarterly, in advance, etc.] Suggested language:*

The total maximum cost liability to (*name of requesting Federal agency*) for this Agreement is \$ (dollar amount). Transfer of (*name of requesting Federal agency*) funds to OAR will be through an Intra-governmental Payment and Collection (IPAC) billing on a quarterly/monthly basis. The Agency Locator Code (ALC) (*get the ALC from the requesting Federal Agency*) is XX-XX-XXXX.

The appropriation out of which [*name of requesting Federal agency*] will pay for these services is: \_\_\_\_\_. These funds expire on [*insert the date on which the funds expire*].<sup>4</sup>

This amount will be deobligated to the extent that the OAR has not incurred obligations before the end of the period of availability of that appropriation. ***[NOTE: OAR may ask for advance payment for all of part of the estimated costs of furnishing the supplies or services, or payment may be made after the supplies and services have been furnished. Under no circumstances will the amount paid be more than the actual costs of the goods or services.]***

OAR will achieve full cost recovery for the goods and services it is providing under this Agreement.

This Agreement is subject to the availability of appropriated funds.

---

<sup>4</sup>However, if the funds are no year funds, state that no year funds are being used for the purchase.

## VII. CONTACTS

The contacts of each Party to this Agreement are:

*[Name of OAR s contact]  
[Title of OAR s contact]  
[Address of OAR s contact]  
[Phone number of OAR s contact ]  
[Fax number of OAR s contact]  
[E-mail address of OAR s contact]*

*[Name of requesting Federal agency s contact]  
[Title of requesting Federal agency s contact]  
[Address of requesting Federal agency s contact]  
[Phone number of requesting Federal agency s contact]  
[Fax number of requesting Federal agency s contact]  
[E-mail address of requesting Federal agency s contact]*

The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change.

## VIII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION

This Agreement will become effective when signed by all Parties. The Agreement will remain in effect through *[insert date]*, unless either terminated by (1) mutual written consent, (2) 30 days advance written notice by either Party, or (3) completion of the operation/ terms of this Agreement.

This Agreement may be amended at any time within the scope of this instrument, extended, or renewed through the written mutual consent of the Parties. *[The Parties may also include in this paragraph language that will allow for either Party to issue a unilateral amendment or modification to effect an administrative change (i.e., a unilateral amendment will not require the signature/acceptance of the other Party; however, see Part 5., Processing Amendments or Annexes, before adding this language).]*

*[NOTE: If the Agreement will last longer than three years, the following sentence should be included in the Agreement: The Parties will review this Agreement at least once every three years to determine whether it should be revised, renewed, or canceled. ]*

## IX. RESOLUTION OF DISAGREEMENTS

Nothing herein is intended to conflict with current DOC or *[name of other Federal agency]* directives. If the terms of this Agreement are inconsistent with existing directives of either of the agencies entering into this Agreement, then those portions of the Agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished either by an amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of both Parties.

Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

X. **APPROVALS**

This Agreement is entered into and made effective as of the date later in time indicated below.

\_\_\_\_\_  
*[Signature of person who has authority  
to make the Economy Act purchase]*

*[Type name]*

*[Type title]*

*[Type name of other Federal agency]*

*[Type address of other Federal agency]*

\_\_\_\_\_  
*[Date]*

\_\_\_\_\_  
*[Signature--must be an official with  
authority to sign Economy Act  
Agreements - Incoming Funds]*

*[Type name]*

*[Type title]*

*[Type office at NOAA/OAR ]*

U.S. Department of Commerce

*[Type address]*

\_\_\_\_\_  
*[Date]*

## EXHIBIT B-2

### **SAMPLE ECONOMY ACT DETERMINATIONS AND FINDINGS** **(Should Be on Requesting Federal Agency s Official Letterhead)**

#### **DETERMINATION AND FINDINGS**

Upon the basis of the following findings and determination, made pursuant to the authority of FAR Subpart 17.5, the effort described in the findings may be acquired by *[type name of requesting Federal agency]* from the *[OAR Program/Staff Office/Laboratory]* by means of an interagency acquisition under the Economy Act of 1932, (31 U.S.C. 1535).

#### **FINDINGS**

1. This portion of the D&F briefly explains the technical basis or rationale for the Determination. (i.e, explain why and how the findings support the determination that (a) sufficient amounts are available; (b) use of an interagency acquisition is in the best interest of the Government; and ©) the supplies or services being provided by the NOAA/OAR servicing program office cannot be obtained as conveniently or economically by the requesting agency by contracting directly with a commercial or private source.
2. If the Economy Act order requires contracting action by NOAA/OAR , the requesting Federal agency should also include a statement that one of the following circumstances is applicable: (a) the acquisition will appropriately be made under an existing contract of the NOAA/OAR servicing office *[identify the NOAA contract number, if possible]* entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services; (b) the NOAA/OAR servicing office has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or ©) the NOAA/OAR servicing office is specifically authorized by law or regulation, *[set forth the citation for the law or regulation]*, to purchase such supplies or services on behalf of other agencies.

#### **DETERMINATION**

Based on the foregoing findings, it is hereby determined that the following requirements of FAR 17.503 are met:

1. Use of an interagency acquisition is in the best interests of the Government.
2. The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

*[Type name of Contracting Officer]*  
*of Requesting Federal agency*

*[Date]*

### EXHIBIT B-3

#### **ECONOMY ACT AGREEMENT CHECKLIST** **(OAR RECEIVABLE AGREEMENT)**

	<b><u>YES</u></b>	<b><u>NO</u></b>
1. Does the Agreement include the following:		
a. Name of OAR s Program/Staff Office/Laboratory	___	___
b. Project Title	___	___
c. OAR s Legal Authority (31 U.S.C. § 1535)	___	___
d. OAR s Programmatic Authority		
e. Other Party s Programmatic Authority	___	___
f. Estimated Costs	___	___
g. Period/Duration of Agreement	___	___
h. Type of Other Party (Must be a Federal agency)	___	___
i. Reviewers Initials and Dates on Automated Transmittal/Route Slip	___	___
j. Signed Economy Act Determination and Finding (obtain a copy from the other Federal agency)	___	___
k. Transmittal Memorandum	___	___
2. General Guideline(s) for Acceptance of Sponsored Work		
<b><u>All blocks must be checked:</u></b>		
Performance of the work is consistent with NOAA authorized programs and the general policies of the Federal Government.		
Performance of the work will not adversely affect regular NOAA programs.		
Performance of the work by NOAA is in the best interest of the Federal Government, but is not related to the normal functions of NOAA.		
Performance of the work by NOAA can be done more effectively than by the private sector due to NOAA s unique expertise and activities.		
3. Is the Economy Act authority being used because a more specific authority does not exist? (If a more specific legal authority for the purchase exists, the Economy Act should not be used as the basis for the Agreement.)	___	___
4. Does the Agreement relate the objectives to the requesting Federal agency s programmatic authority and its agency policies and goals?	___	___
5. Does the Agreement provide a comprehensive description of the terms to which the Parties are agreeing?	___	___
6. Does the Agreement provide only for supplies and services?	___	___
7. Does the Agreement include a provision requiring advance funding?	___	___

	<u>YES</u>	<u>NO</u>
8. Does the Agreement include the appropriation code out of which the requesting Federal agency will pay NOAA/OAR for the goods and services?	___	___
9. Does the Agreement identify the type of funds (e.g., one-year or no-year funds) involved and its expiration date, if applicable?	___	___
10. Does the Agreement include a budget breakout of total costs, including direct labor and the appropriate overhead/indirect rate?	___	___
11. Does the Agreement state that OAR will achieve full cost recovery?	___	___
12. If the Agreement is for an extended period of time, does it include a provision for review at least once every three years, to determine whether it should be revised, renewed or canceled?	___	___
13. If the action is a modification to an Agreement previously cleared by OGC, Assistant General Counsel for Administration(AGC/ADMIN), are signed copies of the underlying Agreement, prior Amendments, and the clearance memorandum included in the Agreement file? (If available, provide the name of the AGC/ADMIN staff attorney who reviewed the underlying Agreement.)	___	___
14. If the Agreement is for a longer period than the current Fiscal Year (FY), does the Agreement include estimated funding levels for each of the subsequent years and include a provision that reads, Funding is currently available for this FY; however, performance beyond the current FY is contingent on the availability of appropriated funds?	___	___
15. Do the signature blocks reflect the appropriate signatory/approving officials per each participating Party s delegations of authority?	___	___



EXHIBIT B-4

**SAMPLE TRANSMITTAL MEMORANDUM FOR  
ECONOMY ACT INTERAGENCY AGREEMENT - INCOMING FUNDS**

MEMORANDUM FOR: Director, Office of Management and Information

FROM: *[Director, OAR Program/Staff Office/Laboratory]*

SUBJECT: Economy Act Agreement between OAR and *[name of requesting Federal agency]* for the acquisition of *(identify program/project title)*

Enclosed is a new Economy Act Agreement between OAR and the *[name of requesting Federal agency]* entitled, *[ identify program or program title, ]* for your review, approval and transmittal for legal clearance. *[If the action is an amendment to an existing Agreement, identify the OAR Task Code and/or NOAA Control Number for the original Agreement or last amendment cleared. Also identify the name of the AGC/ADMIN staff attorney who reviewed the last action, if known.]*

A signed copy of the requesting Federal agency's Economy Act Determination and Finding (D&F) has been obtained and is enclosed pursuant to FAR 17.504. The Agreement includes a Statement of Work (and/or Proposal) and a budget breakout of total project costs, including direct labor and the appropriate overhead rate as determined by the NOAA Office of Finance and Administration. Full cost recovery will be achieved in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996.

*[If the funding relates to a contract, cooperative agreement, or grant, the memorandum should indicate this fact and provide the number assigned to the contract, cooperative agreement or grant if it exists.]*

We have determined that the services covered by this Agreement are not in competition with private enterprise and will serve in the best interest of the Federal Government. The undertakings are consistent with OAR's programs and will not result in diversion of resources to the detriment of our basic programs. Further, the results of the service will not result in controversy that will have an adverse effect on the Department's reputation, and no exclusive proprietary interest will accrue to the other Party to this Agreement. In addition, the *[name of requesting Federal agency]* has determined that it cannot obtain the goods/services that are the subject of this Agreement more cheaply or conveniently from the private sector.

*[If the proposed Agreement is not submitted two months before the start date, provide a (1) an explanation as to why the two-month clearance processing time was not adhered to and (2) an impact assessment on the requesting agency's and/or OAR's program(s), if proposed Agreement is not cleared expeditiously by the start date.]*

The following additional information is provided to be of assistance to the clearance process:

Requesting Federal Agency Program Office:

Requesting Federal Agency Organization Code:

Amount of Incoming Funds: *\$/dollar amount/*

Number of FTE(s) Required: *[number of Full Time Equivalents]*

OAR s Legal Authority: The Economy Act, 31 U.S.C. § 1535

OAR s Programmatic Authority: *[statute that authorizes OAR to engage in the type of activities contemplated under this Agreement]*

Requesting Federal Agency s Programmatic Authority: *[statute that authorizes the Requesting Federal agency to engage in the types of activities contemplated under this Agreement]*

Subject/Key Word:

New/Existing Agreement:

Amendment No. and the OAR Agreement Code and/or Effective Date of date Underlying Agreement (if applicable):

Period of Performance:

OAR s Technical Point of Contact/Telephone No.:

OAR s Administrative Point of Contact/Telephone No.:

Should you have any technical or administrative questions, please contact the appropriate individual designated above.

Enclosures (3)

Proposed Economy Act Agreement

Economy Act D&F

Project Budget Breakout

## **Section C. Joint Project Agreements**

### **C.01. Description and Requirements**

a. **Statutory Requirements.** The JPA , 15 U.S.C. § 1525 (second paragraph), permits DOC operating units to enter into projects with business organizations, nonprofit, research or public organizations (such as Federal, State, and local governments) if the project is of mutual interest to the Parties and the costs of the project are apportioned equitably.

The purpose of the JPA differs significantly from authorities that permit the Department to enter into procurement contracts or to award financial assistance. Thus, while under some circumstances there may be an element of money transfer between the Parties to a Joint Project Agreement (JPA), caution must be taken to ensure that the JPA is not used to circumvent statutory and regulatory requirements relating to the award of procurement contracts or financial assistance. For example, an agreement that sets forth as DOC s main responsibility the transfer of funds to the other Party to the agreement is not a type of agreement which the JPA authorizes. The results of joint projects must be available to all Parties. Each Party should have the right to publish or make use of the results of the project without obligation to other Parties. *[See Exhibit C-1, Model Joint Project Agreement. ]*

b. **Other Requirements.** The DOC Accounting Principles and Standards Handbook, Chapter 18, sets forth additional requirements when OAR s Program /Staff Offices/Laboratory engage in joint projects.

1. **Special Conditions that Need to be Met.** It is DOC policy that joint projects may be undertaken only if the project cannot be done at all or as effectively without the participation of the other Party and the project is essential to further a DOC program. It may be possible to obtain a waiver from the provision that the costs of the project be equitably apportioned; contact the General Counsel Law Division (GC/Admin) for assistance regarding waivers under the JPA. Within OAR , the authority of the Secretary under 15 U.S.C. 1525-1527 to engage in joint projects with non profit, research, industry, and other public organizations and agencies, and to apportion equitably the costs of the project is delegated to the Assistant Administrator (AA). Section 6.02 of the DOC Accounting Principle and Standards Handbook states that unless otherwise provided by statute, joint projects will be performed only under the following conditions: (a) the project cannot be done at all or as effectively without the participation of the other party to the project; and (b) the project is essential to the furtherance of DOC s program.

2. **Access to Confidential Information.** Section 6.03 states that OAR Program/Staff offices/Laboratory will not provide service, publication, access or information to its partners which would violate the provisions of any Federal law requiring that information be held confidential.

3. **Budget Breakouts.** The total project costs (sum of costs or contributions for all participants in the joint project) should be shown and apportioned equitably in the official agreement file. *[See suggested budget format for project costs below.]* When appropriate and agreed upon by the Partners, the JPA will include a budget showing total costs for joint projects listing separate breakouts of costs contributed, including in-kind contributions, by all the Parties to the agreement. However, for Federal agencies, payment of any portion of such costs may be

waived when authorized under OMB regulations. When this situation occurs, contact the Office of the Assistant General Counsel for Administration for assistance regarding waivers under the JPA.

[Suggested budget format for Project Costs (may be used as appropriate):

	OAR Costs	Partner 1	Partner 2	Total
	Cash/In-Kind	Cash/In-Kind	Cash/In-Kind	Cash/In-Kind
Personnel				
Fringe Benefits				
Supplies				
Travel				
Other (Specify)				
Total Direct				
Overhead				
Total Costs ]				

**4. Waivers of Joint Project Agreement Costs. [See Part 5., Section C, General Requirements for Requesting Waivers, for further guidance.]**

**5. Disposition of Receipts.** All receipts for work to be performed under the Joint Project authority shall be deposited in a separate account or accounts. Such receipts may be used to directly pay the cost of such work or services, to repay or make advances to appropriations or funds which will bear all or part of such costs, or to refund excess sums when necessary, provided that said receipts may be credited to a working capital fund otherwise established by law, and used as mandated. The refund to which the receipts are credited must be available for use by the operating unit payments which is responsible for performing the work or services, for which payment is received. Since costs charged to a reimbursable task must not include charges for resources not actually used to accomplish a project, funds transferred in from other Federal agencies solely to support a contract, cooperative agreement, or grant are not Joint Project Agreements.

If there is any question regarding whether an agreement you are contemplating is a procurement contract, financial assistance, or a Joint Project Agreement under 15 U.S.C. § 1525, or for general guidance regarding Joint Project Agreements, contact the Law Division, Office of the Assistant General Counsel for Administration.

**C.02 Review and Clearance Procedures**

**a. Submitting the Proposed Joint Project Agreement for Clearance and Approval.** *[Follow the review and clearance procedures set forth in Part 4., REVIEW AND CLEARANCE PROCEDURES. ]*

**b. Using the Joint Project Agreement Checklist.** To ensure the completeness and accuracy of the proposed JPA and supporting documentation file, the Project Officer should review the proposed Agreement using *Exhibit C-2, Joint Project Agreement Checklist*, before submitting the proposed Joint Project Agreement file to the Director OMI, Management and Organizational Development team for review and clearance.

c. **Preparing the Transmittal Memorandum.** All new JPAs, amendments, modifications, or annexes thereto, must be forwarded to the Director OMI, Management and Organizational Development team, *via* a transmittal memorandum. The transmittal memorandum for the proposed JPA should be addressed and sent to the Director OMI by the OAR Program /Staff Director/Laboratory initiating the Agreement. The Management and Organizational Development team is responsible for proper dissemination of material to insure completeness and accuracy, and obtaining legal clearance of all JPAs, amendments, and renewals thereto from DOC-OGC.

1. **Executive Summary.** The transmittal memorandum serves as an Executive Summary and should include the following information: (a) that the project cannot be done at all or done as effectively without the participation of the outside entity; and (b) the project is essential to a DOC or OAR program.

2. **Additional information to aid in the clearance process.** The transmittal memorandum should also include the following: (a) Name of the Participating Agencies; (b) OAR's Organization Code; (c) Partner Agency Code, if available; (d) OAR's Project Cost Contribution; (e) Partner's Project Cost Contribution; (f) Number of FTEs Required; (g) OAR's Legal Authority; (h) OAR's Programmatic Authority; (i) Partner's Programmatic authority; (j) Subject/Key Word; (k) New/Existing Agreement; (l) Amendment No. and the OAR Task Code or the Effective Date of the Underlying Agreement, if an OAR Task Code was not assigned; (m) Period of Performance; (n) OAR's Technical Point of Contact and Telephone Number; and (o) OAR's Administrative Point of Contact and Telephone Number. ***/See Exhibit C-3, Sample Joint Project Agreement Transmittal Memorandum. /***

C.0.3 **Approval and Signature Authority.** ***/Follow the approval and signature authority set forth in Part 4., Section C.02., Approval/Signature Authorities for Agreements Involving Incoming Funds (Receivable Agreements) or Joint Project Agreements. /***

**EXHIBIT C-1**

**MODEL JOINT PROJECT AGREEMENT**

**A JOINT PROJECT AGREEMENT  
PURSUANT TO**

**TITLE 15 U.S.C. § 1525 (SECOND PARAGRAPH)**

**BETWEEN THE**

*[Name of OAR Program/Staff Office/Laboratory]*

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**U.S. DEPARTMENT OF COMMERCE**

**AND**

*[Name of qualifying Partner]*

**OAR Task Code: (number)**

**NOTE: The purpose of the Department's Joint Project Authority (JPA), 15 U.S.C. Section 1525 (second paragraph), differs significantly from authorities which permit the Department to enter into procurement contracts or to award financial assistance.**

**The JPA cannot be used to circumvent statutory and regulatory requirements relating to the award of procurement contracts or financial assistance. If there is any question regarding whether an agreement you are contemplating is a contract, financial assistance, or a JPA, contact the General Law Division, Office of the Assistant General Counsel for Administration, for guidance.**

## **I. PARTICIPATING JOINT PARTNERS**

This Joint Project Agreement (JPA) is between the *[name of OAR Program/Staff Office/Laboratory]*, U.S. Department of Commerce, and *[name of qualifying Partner]*, which is a *[describe the nature of the Partner, i.e., whether it is a non-profit organization, research organization, or public organization or agency--under the Joint Project statute, a qualifying Partner must be one of these.]*.

## **II. AUTHORITIES**

A. *[Name of OAR Program/Staff Office/Laboratory]* has authority to participate in the *[project/activity]* with *[name of Partner]* under 15 U.S.C. Section 1525, the Department's Joint Project Authority, which provides that the Department may enter into joint projects with nonprofit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned.

B. The programmatic authority for NOAA/OAR is *[cite the U.S. Code, or other statutory authority that allows the OAR operating unit to undertake the project and a brief summary of the statute/legal authority]*.

C. The programmatic authority for the *(type name of Partner)* is *[if the Agreement is with another Federal agency or a state agency, cite the U.S. Code, other statutory authority, or state statutory authority that allows that Federal agency or state agency to undertake the project and a brief summary of the statute/legal authority]*.

## **III. PURPOSE**

Pursuant to this Agreement, the Partners *[provide a clear and succinct description of the project, e.g., pursuant to this Agreement, the Partners will co-sponsor a conference that will be held in Argentina on July 30, 2002, concerning telecommunications trade opportunities in Latin America, and provide a brief explanation of the objective and purpose of the Agreement. It may be necessary to provide background so that it is clear why the Department is undertaking this particular project]*.

This project is necessary and essential to further the mission of the Department in that it will *[explain how it will further the mission of the Department in relation to the statutory authorities cited--this explanation is required by internal DOC policy]* .

*[Name of OAR Program/Staff Office]* has determined that this project cannot be done at all or done as effectively without the participation of *[name of qualifying Partner]* because *[provide an explanation why the project cannot be done at all or as effectively without the Partner's participation---this explanation is required by internal DOC policy]*.

## **IV. MUTUAL INTEREST OF THE PARTNERS**

This *[project]* is of mutual interest to the Partners because *[provide an explanation of how the project benefits each Partner]*.

## V. RESPONSIBILITIES OF THE JOINT PARTNERS

A. *[Name of OAR Program/Staff Office/Laboratory]* agrees to perform the following activities and provide the following resources in support of the *[joint project activity]*:

*[List all activities the operating unit promises to undertake as its responsibilities under the Agreement, e.g., perform research, provide speakers, create brochures, conduct a study, etc.]*

B. *[Name of qualifying Partner]* agrees to perform the following activities and provide the following resources in support of the *[joint project activity]*:

1. *[List all activities the joint project Partner promises to undertake as its responsibilities under the Agreement; note that the partner's activities must be new obligations to the Department--pre-existing obligations which the Partner is already obligated to perform for the Department's benefit cannot be considered when determining whether the costs of the activity are "equitably apportioned" under the Joint Project statute].*

2. *[NOTE: Again, be advised that the JPA cannot be used to circumvent statutory and regulatory requirements relating to the award of procurement contracts or financial assistance. However, if there is an element of funds transfer in the Agreement between the Partners, the Agreement must make clear that the Department's monies are not being used to pay for goods or services that the Department does not have authority to obtain by itself. For example, the Department generally may not use appropriated funds to purchase food for events. If the qualifying Partner is providing food as part of the joint project, the Agreement must make clear that the Department is not paying for this item. Furthermore, if the Department gives money to the project partner for a good or service that is a part of the Agreement, it must be clear that the payment is for actual costs only; generally there may be no element of profit in the Department's payment to the qualifying Partner for goods or services. You should contact the Office of the Assistant General Counsel for Administration if you have questions about these issues.]*

## VI. EQUITABLE APPORTIONMENT OF COSTS

The costs of this activity are equitably apportioned; *[provide an explanation that establishes that the costs of the project are equitably apportioned. This may be done, among other ways, by stating the percentage of overall costs, including in-kind, that each Partner is contributing to the project, e.g., The Department's estimated percentage of total costs of this project are \_\_\_percent. The [name of qualifying partner]'s estimated percentage of costs of this project are \_\_\_ percent ]*

*As an alternative, the initiating operating unit has the option to prepare separate budget breakouts showing the value of each Partner's contribution to the project. If this is necessary, the Agreement would include the following language: The costs of this activity are equitably apportioned. The Department's estimated cost for this project is \$\_\_\_\_\_. The [name of qualifying partner's] estimated cost for this project is \$\_\_\_\_\_. Attached is a copy of the estimated budget for this project which shows each partner's contribution to the project. ]*

**NOTE:** *If costs are not equitably apportioned, then the project will not be legal under the*



***Joint Project Authority. While preparing the Agreement, if there is any question regarding whether the project's costs are equitably apportioned, please contact the General Law Division, Office of the Assistant General Counsel for Administration, for guidance regarding whether the proposed agreement would be legal under the Joint Project Authority.]***

This Agreement is subject to the availability of funds.

## **VII. CONTACTS**

The contacts of each Partner to this Agreement are:

***[Name of the OAR contact]  
[Title of the OAR contact]  
[Address of the OAR contact]  
[Phone number of the OAR contact]  
[Fax number of the OAR contact]  
[E-mail address of the OAR contact]***

***[Name of other Partner's contact]  
[Title of other Partner's contact]  
[Address of other Partner's contact]  
[Phone number of other Partner's contact]  
[Fax number of other Partner's contact]  
[E-mail address of other Partner's contact]***

The Partners agree that if there is a change regarding the information in this section, the Partner making the change will notify the other Partner in writing of such change.

## **VIII. PERIOD OF AGREEMENT, AMENDMENTS, OR TERMINATION**

This JPA will become effective when signed by all the Partners. The Agreement will remain in effect through ***[insert date]***, unless either terminated by (1) mutual written consent, (2) 30/60 days advance written notice by either Partner, or (3) completion of the operation/ terms of this Agreement. In the event this Agreement is terminated, each Partner shall be solely responsible for the payment of any expenses it has incurred.

This Agreement may be amended at any time within the scope of this JPA, extended, or renewed through the written mutual consent of the Partners. ***[The Parties may also include in this paragraph language that will allow for either Party to issue a unilateral amendment or modification to effect an administrative change (i.e., a unilateral amendment will not require the signature/acceptance of the other Party; however, see Part 5., Section C, Processing Amendments or Annexes, before adding this language).]***

***[NOTE: If the JPA will last longer than three years, the following sentence should be included in the agreement: The Partners will review this Agreement at least once every three years to determine whether it should be revised, renewed, or canceled. ]***

## **IX. RESOLUTION OF DISAGREEMENTS**

Nothing herein is intended to conflict with current Department of Commerce or (name of other agency) directives. If the terms of this Agreement are inconsistent with existing directives of either of the agencies entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished by either an amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of the Partners. ***[NOTE: This paragraph is to be used only when the Agreement is with a Federal Government Partner.***

Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Partner and presented to the other Partner for consideration. If agreement on interpretation is not reached within 30 days, the Partners shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

X. **APPROVALS**

This Agreement is entered into and made effective as of the date later in time indicated below.

---

***[Signature--must be an Operating  
Unit Head or official designee with  
authority to sign JPAs]  
[Type name]  
[Type title]  
[Type office at NOAA/OAR  
U.S. Department of Commerce  
[Address]***

---

***[Date]***

---

***[Signature of other Partner who has  
authority to commit the Joint Project Partner]  
[Type name]  
[Type title]  
[Type name of Project partner s organization]  
[Address of Joint Project partner]***

---

***[Date]***

## EXHIBIT C-2

### JOINT PROJECT AGREEMENT CHECKLIST

	<u>YES</u>	<u>NO</u>
1. Does the Agreement include the following:		
a. Name of OAR Program/Staff Office/Laboratory	==	==
b. Project Title	==	==
c. OAR's Legal Authority (15 U.S.C. § 1525 second paragraph)	==	==
d. OAR's Programmatic Authority	==	==
e. Qualifying Partner's Programmatic Authority (if Federal Govt.)	==	==
f. Project Estimated Cost	==	==
g. Period/Duration of Agreement	==	==
h. Type of Qualifying Partner (Federal, State, or local agency etc.)	==	==
i. Reviewers Initials and Dates on Automated Transmittal/Route Slip	==	==
j. Transmittal Memorandum	==	==
2. Does the Agreement explain that the project is of mutual interest to all the Partners and cannot be done as effectively without the participation of the partner and OAR?	==	==
3. Does the Agreement make clear the basis for mutual interest between the Partners to the joint project, and the relevance to OAR program interests?	==	==
4. Does the Agreement specify the rights of each Partner to the results of the joint project?	==	==
5. Does the Agreement explain that the costs for the project are apportioned equitably between the Partners?	==	==
6. Does the official Agreement file include budgets for each of the participants including amounts for in-kind contributions committed to the project by either of the Partners, if any part of the project is to be supported, in whole or in part, by other than direct fund transfer?	==	==
7. Does the Agreement explain that the project is essential to the furtherance of OAR's programs?	==	==
8. Does the Agreement identify the partner as a nonprofit organization, research organization, or public organization, or Federal agency?	==	==
9. If the cost is not apportioned equitably, has a waiver (only for Federal agency partner) been obtained from the appropriate authority or designee?	==	==

	<u>YES</u>	<u>NO</u>
10. If the JPA is for an extended period of time, does it include a provision for review at least once every three years, to determine whether the JPA should be revised, renewed or canceled?	___	___
11. If the JPA is for a longer period than the current Fiscal Year (FY), does the Agreement include estimated project contribution levels for each of the subsequent FYs, and include a provision that reads, Resources are currently available for this FY; however, performance beyond the current FY is contingent on the availability of resources?	___	___
12. If the action is a modification to a JPA previously cleared by OGC, Assistant General Counsel for Administration (AGC/ADMIN), are signed copies of the underlying JPA, prior Amendments, and the AGC/ADMIN clearance memorandum included in the Agreement file? (If available, provide the name of the AGC/ADMIN staff attorney who reviewed the underlying JPA.)	___	___
13. Do the signature blocks reflect the appropriate signatory/approving officials per each of the Partner s delegations of authority?	___	___

## SAMPLE TRANSMITTAL MEMORANDUM FOR A JOINT PROJECT AGREEMENT

SUBJECT: A Joint Project Agreement between *[Identify the OAR Program/Staff Office and qualifying Partner.]*

This project is essential to the furtherance of an OAR program and is of mutual interest to the Partners. The project cannot be done as effectively without the participation of the other organization and OAR because XX  
XX.  
*[In addition, unless a waiver of any portion of the costs has been approved by the Under Secretary for Oceans and Atmosphere or designee, provide a brief statement that the cost for the project is apportioned equitably.]*

**If the proposed Agreement is not submitted two months before the start date, provide a**  
**(1) an explanation as to why the two-month clearance processing time was not adhered to and**  
**(2) an impact assessment on the requesting agency's and/or OAR's program(s), if proposed**  
**Agreement is not cleared expeditiously by the start date.]**

Participating Agencies: Identify the JPA Partners  
OAR's Organization Code:

Partner s Organization Code, if available:

OAR s Project Cost Contribution: 140K *[by Fiscal Year.]*

Partner s Project Cost Contribution: 150K *[by Fiscal Year.]*

Number of FTE(s) Required: *[number of Full Time Equivalents]*

OAR s Legal Authority: DOC Joint Project Authority, 15 U.S.C. 1525 (second paragraph)

OAR s Programmatic Authority: *[statute that authorizes OAR to engage in the project]*

Qualifying Partner s Programmatic Authority: *[statute that authorizes the Partner to engage in the project]*

Subject/Key Word:

New/Existing Agreement:

Amendment No. and the underlying JPA OAR Agreement Code and/or the Effective Date of the JPA, if an OAR Agreement Code was not assigned:

Period of Performance:

OAR s Technical Point of Contact/Telephone No.:

OAR s Administrative Point of Contact/Tel No.:

Should you have any technical or administrative questions, please contact the appropriate individual designated above.

Enclosures

Draft JPA

Separate Budgets of the Partners

## SECTION D. Special Studies Agreements

### D.01. DESCRIPTION AND REQUIREMENTS.

a. **Statutory Requirements.** The Special Studies authority, 15 U.S.C. § 1525 (first paragraph) authorizes DOC to provide, upon the request of any person, firm, or public or private organization (1) special studies on matters within the authority of the Department of Commerce, including preparing from its records special compilations, lists, bulletins, or reports, and (2) furnishing transcripts or copies of its studies, compilations, and other records. These services and products can be provided only upon the payment of the actual or estimated costs of such special work, and as such, is a type of reimbursable agreement. Payment for work or services performed under this authority shall be deposited into a separate account or accounts, which will be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of the costs, or to refund excess sums, when necessary.

This statute is an example of one that authorizes the use of funds to repay appropriations which have already incurred the expenses, thereby authorizing the Department to collect funds after the expenditure for the services has been made. Therefore, as long as NOAA/OAR has program funds available to cover the cost of the work until payment is received, advance payment is not required. However, as the statute also states that the work must be upon payment, the final product should not be provided to the requester until payment is received. (Underscored for emphasis.) *[See Exhibit D-1, "Model Special Studies Agreement. ]*

b. **Other Requirements.** The following requirements also apply to Special Studies Agreements.

1. OMB Circular 1-25. If the special study being requested provides a special benefit beyond those received by the general public, then the agreement is subject to OMB Circular A-25<sup>5</sup>, User Charges. The Circular requires that the charges for the services must be sufficient to recover the full cost to the Federal Government. Unless otherwise provided by law, user charges for special studies must recover the full costs incurred by OAR when providing special benefits to non-Federal recipients.

***[NOTE: TO OGC. Reference OGC email dated June 7, 2000, from Brian DiGiacomo. Based on OGC's analysis of the impact of the revision to OMB Circular-A-34 as it pertains to advance payments, it would appear that OMB Circular A-25 does not apply to Special Studies Agreements because the defining characteristic of whether an agreement***

---

<sup>5</sup> OMB Circular A-25 defines special benefits as follows:

a. Special benefits 1. Determining when special benefits exist. When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service: (a) enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or (b) provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or (c) is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Customs inspection after regular duty hours).

*requires advance payment is the statutory authority that is used to authorize the acceptance of the funds. A-25 applies when we are convey-[ing] special benefits to recipients beyond those accruing to the general public. Section 4(a) is guidance to agencies regarding their assessment of user charges under other statutes. The Circular requires that user charges . . . be collected in advance of, or simultaneously with, the rendering of services unless there are specific appropriations and authority to pay afterwards. 15 U.S.C. 1525 (first paragraph) specifically authorizes the collection of fees after the provision of the work. Only agreements that invoke general user charge statute are subject to A-25. In light of this, recommend we delete item 1. above. ]*

2. DOC Accounting Principles and Standards Handbook. Chapter 18, Section 6, states that full cost for performing work for others shall be recorded for each project regardless of Agreements made as to the amount of reimbursement. This is done so that costs will be known on a historical basis for negotiation of future Agreements. OAR should comply with laws and regulations related to pricing policies in general and for specific types of goods and services.

The DOC Accounting Principles and Standards Handbook also states that as a type of reimbursable services provided by OAR to Federal agencies and other governmental instrumentalities (including NOAA/OAR operating units), private persons, commercial organizations and non-profit organizations, Special Studies Agreements should only be undertaken when the following conditions apply.

(a) The service would not be considered to be in competition with private enterprise. In the case of research activities and special studies, this would be projects that cannot be done at all or done as effectively by a private research agency because basic data, knowledge, or facilities needed to accomplish the project are available only in NOAA/OAR .

(b) The end results of the project will serve the public interest and are consistent with NOAA/OAR programs.

(c) Undertaking the project will not result in the diversion of resources to the detriment of the basic programs of an OAR operating unit.

(d) Undertaking the project will not result in controversy which will have an adverse effect upon the reputation of the NOAA/OAR for impartiality and objectivity.

(e) A written agreement is entered into covering the service(s) to be performed and such agreement shall provide, unless determined otherwise for good reason shown and documented, that no exclusive proprietary interest shall accrue to the individual or group. The Agreement shall also provide that the results of special studies are the joint property of the individual group and of NOAA/OAR , and that NOAA/OAR may publish or make use of the results of studies without any obligation to the sponsor.

(f) It is authorized by law.



## D.02. Review and Clearance Procedures

a. **Submitting the proposed JPA for Clearance.** *[Follow the review and clearance procedures set forth in Part 4., REVIEW AND CLEARANCE PROCEDURES. ]*

b. **Using the Special Studies Agreement Checklist.** To ensure the completeness and accuracy of the proposed Special Studies Agreement and supporting file documentation, the Project Officer should review the draft agreement using *Exhibit D-2, Special Studies Agreement Checklist*, before submitting the proposed Special Studies Agreement file to the Director OMI, Management and Organizational Development team, for proper dissemination of material to insure completeness, accuracy and clearance.

b. **Preparing the Transmittal Memorandum.** All new Special Studies Agreements, amendments, or modifications thereto, should be submitted for clearance via a transmittal memorandum.

1. **Executive Summary.** The transmittal memorandum serves as an Executive Summary and should include the following information. (a) OAR has determined that the services covered by this Agreement are not in competition with private enterprise and will serve the best interest of the Federal Government. (b) The undertakings are consistent with OAR s programs and will not result in diversion of resources to the detriment of basic NOAA/OAR programs. ©) The results of the service will not result in controversy that will have an adverse effect on the Department s reputation, and no exclusive proprietary interest will accrue to the other Party to this Agreement.

2. **Additional Information to Aid in the Clearance Process.** The transmittal memorandum should also include the following additional information to aid in the clearance process. (a) Name of the Participating Agencies; (b) OAR s Organization Code; ©) Requesting Agency s Code, if available; (d) Incoming Funds; (e) Funding Agency; (f) Number of OAR FTEs Required; (g) OAR s Legal Authority; (h) Requesting Agency s Programmatic Authority; (I) Subject/Key Word; (j) New/Existing Agreement; (k) Amendment No. and the OAR Task Code or the Effective Date of the Underlying Agreement, if an OAR Task Code number was not assigned; (l) Period of Performance; (m) OAR s Technical Point of Contact and Telephone Number; and (n) OAR s Administrative Point of Contact and Telephone Number.

*[See Exhibit D-3, Sample Special Studies Agreement Transmittal Memorandum. ]*

D.03. **APPROVAL AND SIGNATURE AUTHORITY.** *Follow the approval and signature authority set forth in Part 4., Section C.02., Approval/Signature Authorities for Agreements Involving Incoming Funds (Receivable Agreements) or Joint Project Agreements. ]*

**EXHIBIT D-1**

**MODEL SPECIAL STUDIES AGREEMENT**

**A SPECIAL STUDIES AGREEMENT**

**PURSUANT TO**

**TITLE 15 U.S.C. § 1525 (FIRST PARAGRAPH)**

**THROUGH WHICH**

*[Name of requesting Party]*

**IS PURCHASING**

*[State what special studies they are purchasing]*

**FROM**

*[Name of OAR Program/Staff Office/Laboratory]*

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**U.S. DEPARTMENT OF COMMERCE**

**OAR Task Code: (Number)**

## **I. PARTIES AND PURPOSE**

This Special Studies Agreement is entered into between the *[name of requesting Party]* and *[name of the servicing OAR Program/Staff Office/Laboratory]*, U.S. Department of Commerce (DOC), through which *[name of requesting Party]* will pay *[name of servicing OAR s Program/Staff Office/Laboratory]* for *[provide a general description of the nature of the Special Studies for which the requesting Party is paying]*.

## **II. AUTHORITIES**

A. The legal authority for *[name of requesting Party]* and DOC to enter into this Agreement is the Special Studies authority, 15 U.S.C. § 1525 (first paragraph), which permits DOC to provide, upon the request of any person, firm, or public or private organization (a) special studies on matters within the authority of the Department of Commerce, including preparing from its records special compilations, lists, bulletins, or reports, and (b) furnishing transcripts or copies of its studies, compilations, and other records; and

B. The programmatic authority for *(type the name of the requesting Party or State or local government organization)* is *(if applicable, set forth the other Party s legal authority under which it is making the purchase for the Special Studies or research services, i.e., the programmatic authority to which the purchase is related)]*.

## **III. TERMS AND CONDITIONS**

*[State the terms and conditions of the Agreement, i.e., what it is specifically that the other Party is purchasing, delivery requirements, and the amount that the servicing OAR s Program/Staff Office/Laboratory will receive as payment.]*

*[NOTE to OGC. References to OMB Circular A-25 were deleted since they do not apply to Special Studies. See OGC e-mail guidance dated June 7, 2000, regarding requiring advance payments from all its non-Federal partners. OGC and OMB opined that NOAA is not required in all instances to collect payments for reimbursable work in advance because the defining characteristic of whether an Agreement requires advance payment is the statutory authority that is used to authorized the acceptance of the funds. For example, Agreements which invoke 15 USC 1525 (first or second paragraphs), 33 USC 883e, and 31 USC 6505 do not require advance payments. Furthermore, the OGC guidance stated that OMB A-25 will only apply to user fee agreements which do not have a specific statutory authority authorizing reimbursement into the agency's account. The Special Studies statute is an example of one that authorizes the use of funds to repay appropriations which have already incurred the expenses, thereby authorizing the Department to collect funds after the expenditure for the services has been made.]*

The final product as a result of the requested Special Studies will not be provided to *[name of other Party or Requester]* until payment has been made. *[Mandatory provision]*

## **IV. TRANSFER OF FUNDS**

*[Explain the details of how the requesting Party will pay OAR for the special studies, e.g.,*

*whether payments will be monthly, quarterly, in advance, etc.] Suggested language:*

The total maximum cost liability to (*name of other Party*) for this Special Studies Agreement is \$ (dollar amount). Transfer of (*name of requesting Party*) funds to OAR will be through an Intra- governmental Payment and Collection (IPAC ) billing on a quarterly/monthly basis. The Agency Locator Code (ALC) (*get the ALC from the requesting Party*) is XX-XX-XXXX.

*[NOTE: OAR may ask for advance payment for all of part of the estimated costs of conducting the special studies, or payment may be made after the services have been completed; however, the final product should not be provided to the requester until payment is received. Under no circumstances will the amount paid be more than the actual costs incurred by OAR in conducting the special studies.]*

*[Name of servicing OAR s Program/Staff Office/Laboratory] will achieve full cost recovery for the special studies activities it is providing under this Agreement.]*

This Agreement is subject to the availability of funds.

## V. CONTACTS

The contacts of each Party to this Agreement are:

*[Name of the OAR contact]  
[Title of the OAR contact]  
[Address of the OAR contact]  
[Phone number of the OAR contact]  
[Fax number of the OAR contact]  
[E-mail address of the OAR contact]*

*[Name of requesting Party s contact]  
[Title of requesting Party s contact]  
[Address of requesting Party s contact]  
[Phone number of requesting Party s contact]  
[Fax number of requesting Party s contact]  
[E-mail address of requesting Party s contact]*

The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change.

## VI. DURATION OF AGREEMENT, AMENDMENTS, OR MODIFICATIONS

This Agreement will become effective when signed by all Parties. The Agreement will remain in effect through *[insert date]*, unless either terminated by (1) mutual written consent, (2) 30/60 days advance written notice by either Party, or (3) completion of the operation/ terms of this Agreement.

This Agreement may be amended at any time within the scope of this instrument, extended, or renewed through the written mutual consent of the Parties. *[The Parties may also include in this paragraph language that will allow for either Party to issue a unilateral amendment or*

*modification to effect an administrative change (i.e., a unilateral amendment will not require the signature/acceptance of the other Party; however, see Part 5., Section C, Processing Amendments or Annexes, before adding this language).]*

*[NOTE: If the Agreement will last longer than three years, the following sentence should be included in the Agreement: The Parties will review this Agreement at least once every three years to determine whether it should be revised, renewed, or canceled. ]*

## **VII. RESOLUTION OF DISAGREEMENTS**

Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

## **VIII. APPROVALS**

This Agreement is entered into and made effective as of the date later in time indicated below.

\_\_\_\_\_  
*[Signature of person who has authority  
to bind other Party to the Agreement]  
[Type name of other Party]  
[Type title of other Party]  
[Type address of other Party]*

\_\_\_\_\_  
*[Date]*

\_\_\_\_\_  
*[Signature must be an OAR official with  
authority to sign Agreements]  
[Type name of the OAR Official]  
[Type title]  
[Type office at NOAA/OAR ]  
U.S. Department of Commerce  
[Typed address]*

\_\_\_\_\_  
*[Date]*

## EXHIBIT D-2

### SPECIAL STUDIES AGREEMENT CHECKLIST (OAR RECEIVABLE AGREEMENT)

	<u>YES</u>	<u>NO</u>
1. Does the Agreement include the following:		
a. Name of the OAR s Program/Staff Office/Laboratory	==	==
b. Project Title	==	==
c. OAR s Legal Authority (15 U.S.C. § 1525 (first paragraph))	==	==
d. OAR s Programmatic Authority		
e. Other Party s Programmatic Authority (if Federal Govt.)	==	==
f. Special Studies Estimated Cost	==	==
g. Period/Duration of Agreement	==	==
h. Type of Other Party (Federal, State, or local agency etc.)	==	==
i. Reviewers Initials and Dates on Automated Transmittal/Route Slip	==	==
j. Transmittal Memorandum	==	==
2. Does the Agreement relate its objectives to the other Party s programmatic authority and its agency policies and goals?	==	==
3. Does the Agreement provide a comprehensive description of the terms to which the Parties are agreeing?	==	==
4. Does the Agreement provide only for supplies and services?	==	==
5. Does the Agreement file include a budget breakout of total estimated costs for the special studies, including direct labor, other direct costs, and the appropriate OAR overhead/indirect rate?	==	==
6. Does the Agreement identify the total cost liability of the other Party?	==	==
7. Does the Agreement state that full cost recovery will be achieved?	==	==
8. Does the Agreement state that the final product will not be provided to the requester until payment is made?	==	==
9. Does the Agreement identify the type of funds available and its expiration date (e.g., one year, or no-year monies)?	==	==
10. Have you ensured that NOAA/OAR is not receiving a profit?	==	==
11. If the Agreement is for a longer period than the current Fiscal Year (FY), does the Agreement include estimated funding levels for each of the subsequent FYs, and include a provision that reads: Funding in the amount of \$ (identify dollar amount ) is currently available for this FY;		

	<u>YES</u>	<u>NO</u>
however, performance beyond the current FY is contingent on the availability of funds?	—	—
12. If the Agreement is for an extended period of time, does it include a provision for review at least once every three years, to determine whether it should be revised, renewed or canceled?	—	—
13. If the action is a modification to an Agreement previously cleared by OGC/Admin, are copies of the signed Agreement, prior Amendments, and AGC/ADMIN clearance included as supporting documentation? (If available, provide name of the AGC /ADMIN staff attorney who reviewed the underlying Agreement.)	—	—
14. Do the signature blocks reflect the appropriate signatory/approving officials in accordance with each of the Party s delegation of authority?	==	==

## EXHIBIT D-3

### SAMPLE TRANSMITTAL MEMORANDUM FOR SPECIAL STUDIES AGREEMENTS

MEMORANDUM FOR: Director, Office of Management and Information

FROM: *[Director, OAR Program/Staff Office/Laboratory]*

SUBJECT: A Special Studies Agreement between *[name of the OAR Program/Staff Office/Laboratory and name of requesting State or local Party]*

Enclosed is a new Special Studies Agreement between the Office of Oceanic and Atmospheric Research (OAR ) and *[name of requesting State or local Party]* entitled, *[name or title of the special study project]*," for your review, approval and transmittal to the Office of General Counsel for clearance. *[If the action is an amendment to an existing Special Studies Agreement, the memorandum should provide the OAR Task Code and/or NOAA Control Number for the underlying Agreement or last amendment cleared, and the name of the AGC /ADMIN staff attorney who reviewed the last action, if known].*

The attached Agreement includes a Statement of Work (and/or a Proposal) for the special studies and budget breakouts of total special studies costs, including direct labor and the appropriate overhead rate for the OAR activity as determined by the NOAA Office of Finance and Administration.

We have determined that the research activities and/or special studies contemplated under this Agreement cannot be done at all, or done as effectively by a private research agency because basic data, knowledge, or facilities needed to accomplish the project are available only in NOAA/OAR; therefore the services to be provided by OAR are not considered to be in competition with private enterprise. The end results of the project will serve the public interest and are consistent with NOAA/OAR programs. Undertaking the project will not result in the diversion of resources to the detriment of the basic programs of the OAR Program/Staff Office/Laboratory and will not result in controversy which will have an adverse effect upon the reputation of NOAA/OAR for impartiality and objectivity. Furthermore, no exclusive proprietary interest shall accrue to the individual or group. The Agreement includes a proviso that the results of special studies are the joint property of the individual group and of NOAA/OAR, and that NOAA/OAR may publish or make use of the results of studies without any obligation to the sponsor.



**[If the proposed Agreement is not submitted two months before the start date, provide a (1) an explanation as to why the two-month clearance processing time was not adhered to and (2) an impact assessment on the requesting agency s and/or OAR s program(s), if proposed Agreement is not cleared expeditiously by the start date.]**

The following additional information is provided to aid the clearance process:

Name of the Participating Agencies:

OAR s Organization Code:

Requesting Agency Code, if available:

Funding Agency:

Incoming Funds: \$ *[dollar amount by Fiscal Year]*

Number of OAR s FTEs Required: *[number of Full Time Equivalents]*

OAR s Legal Authority: Title 15 U.S.C. § 1525 (first paragraph)

OAR s Programmatic Authority: *[statute that authorizes OAR to engage in the instant special studies or project]* Requesting Agency s Programmatic Authority: *[statute that authorizes the requesting Party to engage in the instant special studies or project]*

Subject/Key Word:

New/Existing Agreement:

Amendment No. and the OAR Agreement Code and/or the Effective Date of the Underlying Agreement, if a OAR Agreement Code was not assigned:

Period of Performance:

OAR s Technical Point of Contact/Telephone Number:

OAR s Administrative Point of Contact/Telephone Number:

Should you have any technical or administrative questions, please contact the appropriate individual designated above.

Enclosures

Draft Special Studies Agreement

Budget for Special Studies

## **Section E. Intergovernmental Cooperation Act Agreements**

### **E.01. Description and Requirements**

a. **Statutory Requirement.** The Intergovernmental Cooperation Act of 1968, 31 U.S.C. § 6505, provides that the President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.

Executive branch agencies may provide services prescribed by the President to a State or local government when (1) written request is made by the State or local government; and (2) payment and all other identifiable costs of providing the services is made to the executive agency by the State or local government making the request.

b. **Regulatory Requirement.** It is NOAA/OAR's policy to cooperate with State or local government through reimbursable tasks, consistent with the need to carry out effectively and efficiently its authorized programs and the general policies of the Federal Government. Other regulatory guidance are found in the following documents.

(1) **NOAA Budget Handbook Chapter 2. Section 03, Reimbursable Task Planning,** prescribes the policies and procedures to be followed by all Line offices (LOs), Financial Management Centers, and laboratories in negotiating, obtaining approval, and performing work for sponsors outside of NOAA. Generally, reimbursable work will be accepted only if it can be performed without adversely affecting regular NOAA programs. In addition, detailed instructions are provided in paragraph 3 of this section which enable NOAA offices to complete the Reimbursable Task Plan form, as required.

(2) **OMB Circular A-97** sets forth guidance concerning the Intergovernmental Cooperation Act. It provides that agencies may provide the following services pursuant to the Act:

(a) Any existing statistical or other studies and compilations, results of technical tests and evaluations, technical information, surveys, reports, and documents, and any such materials which may be developed or prepared in the future to meet the needs of the Federal Government or to carry out the normal program responsibilities of the Federal agencies involved.

(b) Preparation of statistical and other studies and compilations, technical tests and evaluations, technical information, surveys, reports, and documents, and assistance in the conduct of such activities and in the preparation of such materials, provided they are of a type similar to those which the Federal agency is authorized by law to conduct or prepare.

©) Training of the type which the Federal agency is authorized by law to conduct for Federal personnel and others or which is similar to such training.

(d) Technical aid in the preparation of proposals for development and other projects for which the Federal agency provides grants-in-aid or other assistance, provided such aid primarily strengthens the ability of the recipient in developing its own capacity to prepare proposals.

(e) Technical information, data processing, communications and personnel management systems services which the Federal agency normally provides for itself or others under existing authorities.

Services in 2a through e above may not be provided unless the agency providing the services is providing similar services for its own use under the policies in OMB Circular A-76,

Performance of Commercial Activities. In addition, in accordance with the policies set forth in Circular No. A-76, the requesting entity must certify that specialized or technical services cannot be procured reasonably and expeditiously by it through ordinary business channels.

Such services will not be provided if they require any additions of staff or if they involve outlays for additional equipment or other facilities solely for the purpose of providing such services, except where the costs thereof are charged to the user of such services. No staff additions may be made which impede the implementation of or adherence to the employment ceilings contained in OMB guidance or directives. In the event a request for a service is denied, the Federal agency shall furnish the entity making the request with a statement indicating the reasons for the denial.

(3) Payments. The Intergovernmental Cooperation Act authorizes agencies to perform certain services for State and local governments, if reimbursed. The statute provides that funds shall be deposited to the . . . appropriation from which the cost of providing the services has been paid or will be charged. (See 31 U.S.C. 6506(c)). This is explicit authority to be reimbursed after OAR has spent the cost of providing the service; therefore, advance payment would not be required.

It is NOAA policy to recover full costs, both direct and indirect, for performance of services for others. Costs charged to a reimbursable Intergovernmental Cooperation Act Agreement must not include charges for resources not actually used to accomplish the project. Normally, such costs should be officially charged against the appropriate tasks when the work is performed and the resources expended. If this is not possible, or practical, accurate supporting documentation must be maintained upon which subsequent cost adjustments can be made. This includes the recording and assignment of direct labor hours, and the costs of equipment, supplies, and other acquisitions to the benefitting project. The Assistant Administrator, OAR, or designee, will make no commitment to waive any element of cost (direct or indirect) or pay increases or cost overruns, without appropriate prior approval. The procedures for obtaining waivers of direct or indirect costs are contained in the NOAA Budget Handbook, Chapter 2, section 03.2.e. *[See Exhibit E-1, Model Intergovernmental Cooperation Act Agreement. ]*

## **E.02. Clearance Procedures**

a. **Submitting the Proposed Intergovernmental Cooperation Act Agreement for Clearance.** *[Follow the review and clearance procedures set forth in Part 4., REVIEW AND CLEARANCE PROCEDURES. ]*

b. **Using the Intergovernmental Cooperation Act Checklist.** To ensure the completeness and accuracy of the proposed Intergovernmental Cooperation Act Agreement and supporting file documentation, the Project Officer should review the draft agreement using ***Exhibit E-2, Intergovernmental Cooperation Act Agreement Checklist***, before submitting the proposed agreement file to the Director OMI, Management, Organizational and Development Team, for proper dissemination of material to insure completeness and accuracy.

c. **Preparing the Transmittal Memorandum.** All new Intergovernmental Cooperation Act Agreements, amendments, modifications thereto, must be forwarded to the Director OMI, *via* a transmittal memorandum. The transmittal memorandum for the proposed agreement should be addressed and sent to the Director OMI, by the OAR Program/Staff/Laboratory Director initiating or sponsoring the agreement. The Management, Organizational and Development Team is responsible for reviewing and obtaining legal clearance of all Intergovernmental Cooperation Act Agreements, amendments, and renewals thereto from DOC-OGC.

1. **Executive Summary.** The transmittal memorandum serves as an Executive Summary and should include the following information. (a) OAR has determined that the services covered by this Agreement are consistent with and further the policy of the United States Government of relying on the private enterprise business channels. (b) Similar services are being provided for its own use under the policies set forth in OMB Circular A-76, Performance of Commercial Activities. (c) In addition, in accordance with the policies set forth in Circular No. A-76, the Program/Staff Office/Laboratory (servicing entity) certifies that such services cannot be procured reasonably and expeditiously by it through ordinary business channels. (d) OAR has determined that the services covered by this Agreement are not in competition with private enterprise and will serve the interest of the Federal Government. (e) The undertakings are consistent with OAR's programs and will not result in diversion of resources to the detriment of our basic programs. Further, the results of the service will not result in controversy that will have an adverse effect on the Department's reputation, and no exclusive proprietary interest will accrue to the other Party to this Agreement.

2. **Additional Information to aid in the Clearance Process.** The transmittal memorandum should also include the following additional information to aid in the clearance process: (a) Name of the Participating Agencies; (b) OAR's Organization Code; (c) Requesting Agency's Code, if available; (d) Incoming Funds; (e) Funding Agency; (f) Number of OAR's FTEs Required; (g) OAR's Legal Authority; (h) OAR's Programmatic Authority; (i) Requesting Agency's Programmatic authority; (j) Subject/Key Word; (k) New/Existing Agreement; (l) Amendment No. and the OAR Agreement Code or the Effective Date of the Underlying Agreement, if an OAR Agreement Code was not assigned; (m) Period of Performance; (n) OAR's Technical Point of Contact and Telephone Number; and (o) OAR's Administrative Point of Contact and Telephone Number. ***[See Exhibit E-3, Sample Intergovernmental Cooperation Act Agreement Transmittal Memorandum. ]***

**E.0.3. APPROVAL AND SIGNATURE AUTHORITY.** ***[Follow the approval and signature authority set forth in Part 4., Section C.02., Approval/Signature Authorities for Agreements Involving Incoming Funds (Receivable Agreements) or Joint Project Agreements. ]***

**EXHIBIT E-1**

**MODEL INTERGOVERNMENTAL COOPERATION ACT AGREEMENT**

**AN INTERGOVERNMENTAL COOPERATION ACT AGREEMENT**

**PURSUANT TO**

**TITLE 31 U.S.C. § 6505**

**THROUGH WHICH**

*[Name of requesting State or local agency]*

**IS PURCHASING**

*[State what they are purchasing]*

**FROM**

*[Name of OAR Program /Staff Office/Laboratory]*

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**U.S. DEPARTMENT OF COMMERCE**

**OAR Task Code:**

*[Insert the OAR task code number ]*

## **I. PARTIES AND PURPOSE**

This Intergovernmental Cooperation Act Agreement is entered into between *[name of requesting State or local agency]* and *[the name of servicing OAR Program/Staff Office/Laboratory]* for *[provide a brief description of the services being provided by OAR or project title.]*

## **II. AUTHORITIES**

A. The legal authority for *[name of requesting State or local agency]* and OAR to enter into this Agreement is the Intergovernmental Cooperation Act, 31 U.S.C. § 6505.

B. The programmatic authority for NOAA/OAR is *[Cite the statute that authorizes OAR to engage in the types of activities contemplated under the Agreement.]*.

C. The programmatic authority for the *[name of requesting State or local agency]* is *[Cite the requesting State or local agency's statutory authority under which it is making the purchase for goods/or services, (i.e., the programmatic authority to which the purchase is related).]*

## **III. TERMS AND CONDITIONS**

*[State the terms and conditions of the Agreement, i.e., what it is specifically that the requesting State or local agency Party is purchasing, delivery requirements, and the amount that the servicing OAR operating unit will receive as payment.]*

## **IV. TRANSFER OF FUNDS**

*[Explain the details of how the other Party will pay for the goods/services, e.g., whether payments will be monthly, quarterly, in advance, etc.] [Also see the NOAA Reimbursable Task Plan Handbook Update, dated October 1999, revised 01 October 2000, Section 2-03 1. (3) Payment Policy.]*

The total cost liability of *[name of requesting State or local agency]* is *[\$[dollar amount]]*.

*[Name of servicing OAR's Program/Staff Office/Laboratory]* will achieve full cost recovery for the goods and services it is providing under this Agreement. Payment funds received shall be deposited to the NOAA appropriation from which the cost of providing the services under this Agreement has been paid or will be charged.\*

*\* This is explicit authority to be reimbursed after the servicing OAR operating unit has incurred costs for providing the requested services (i.e., an advance payment is not required by the Intergovernmental Cooperation Act).*

This Agreement is subject to the availability of funds.

## V. OMB CIRCULAR A-97 CERTIFICATION\*

As required by OMB Circular A-97, *[name of servicing OAR Program/Staff Office/Laboratory]* certifies that the services being requested pursuant to this Agreement cannot be procured reasonably and expeditiously by it through ordinary business channels.

## VI. CONTACTS

The contacts of each Party to this Agreement are:

*[Name of the OAR contact]  
[Title of the OAR contact]  
[Address of the OAR contact]  
[Phone number of the OAR contact]  
[Fax number of the OAR contact]  
[E-mail address of the OAR contact]*

*[Name of requesting Party's contact]  
[Title of requesting Party's contact]  
[Address of requesting Party's contact]  
[Phone number of requesting Party's contact]  
[Fax number of requesting Party's contact]  
[E-mail address of requesting Party's contact]*

The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change.

## VII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION

This Agreement will become effective when signed by all the Parties. The Agreement will remain in effect through *[insert date]*, unless either terminated by (1) mutual written consent, (2) 30/60 days advance written notice by either Party, or (3) completion of the operation/ terms of this Agreement.

This Agreement may be amended within the scope of this Agreement, extended, or renewed at any time through the written mutual consent of the Partners. *[The Parties may also include in this paragraph language that will allow for either Party to issue a unilateral amendment or modification (i.e., a unilateral amendment will not require the signature/acceptance of the other Party; however, see Part 5., Section C, Processing Amendments or Annexes, before adding this language).]*

*[NOTE: If the Agreement will last longer than three years, the following sentence should be included in the Agreement: The Parties will review this Agreement at least once every three years to determine whether it should be revised, renewed, or canceled. ]*

## VIII. RESOLUTION OF DISAGREEMENTS

Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within thirty days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

## IX. APPROVALS

This Agreement is entered into and made effective as of the date later in time indicated below.

\_\_\_\_\_  
*[Signature of person who has authority  
to bind other Party to the Agreement]  
Type name of other Party]  
[Type title of other Party]  
[Type address of other Party]*

\_\_\_\_\_  
*[Date]*

\_\_\_\_\_  
*[Signature must be an OAR official with  
authority to sign Agreements]  
[Type name of the OAR Official]  
[Type title]  
[Type office at NOAA/OAR ]  
U.S. Department of Commerce  
[Type address]*

\_\_\_\_\_  
*[Date]*



## EXHIBIT E-2

### INTERGOVERNMENTAL COOPERATION ACT AGREEMENT CHECKLIST (OAR RECEIVABLE AGREEMENT)

	<u>YES</u>	<u>NO</u>
1. Does the Agreement include the following:		
a. Name of OAR Program/Staff Office/Laboratory	==	==
b. Project Title	==	==
c. OAR's Legal Authority (31 U.S.C. § 6505)	==	==
d. OAR's Programmatic Authority	==	==
e. Other Party's Programmatic Authority (if Federal Govt.)	==	==
f. Estimated Costs	==	==
g. Period/Duration of Agreement	==	==
h. Type of Other Party (Must be a State or local government agency)	==	==
i. Reviewers Initials and Dates on Automated Transmittal Route Slip	==	==
j. Transmittal Memorandum	==	==
2. Is the Intergovernmental Cooperation Act authority being used appropriately?	==	==
3. Does the Agreement relate to the objectives of the requesting Party's programmatic authority and its agency policies and goals?	==	==
4. Does the Agreement provide a comprehensive description of the terms to which the Parties are agreeing?	==	==
5. Does the Agreement provide only for supplies and services?	==	==
6. Does the Agreement file include a budget breakout of total estimated costs for the services being provided by OAR, including direct labor, other direct costs, and appropriate overhead/indirect cost rate?	==	==
7. Does the Agreement identify the total cost liability of the other Party?	==	==
8. Does the Agreement state that OAR will achieve full cost recovery?	==	==
9. Have you ensured that the NOAA/OAR is not receiving a profit?	==	==
10. Does the Agreement stipulate that payment funds received will be deposited by OAR to the appropriation from which the cost of providing the services has been paid or will be charged?	==	==
11. If the Agreement is for a longer period than the current Fiscal Year (FY), does the Agreement include estimated funding levels for each of the following out years and include a provision that reads: Funding in the		

	<u>YES</u>	<u>NO</u>
amount of \$ <b>[dollar amount]</b> is currently available for this FY; however, performance beyond the current FY is contingent on the availability of funds?	<u>      </u>	<u>      </u>
12. If the Agreement is for an extended period of time, does it include a provision for review, at least once every three years, to determine whether it should be revised, renewed or canceled?	<u>      </u>	<u>      </u>
13. If the action is a modification to an Agreement previously cleared by OGC, Assistant General Counsel for Administration (AGC/ADMIN), are signed copies of the underlying Agreement, prior Amendments, and the AGC/Admin clearance memorandum included in the the Agreement file? If available, provide name of AGC/ADMIN Staff attorney who reviewed the underlying Agreement.)	<u>      </u>	<u>      </u>
14. Do the signature blocks reflect the appropriate signatory/approving officials in accordance with each of the Party s delegations of authority?	<u>      </u>	<u>      </u>

### EXHIBIT E-3

## SAMPLE TRANSMITTAL MEMORANDUM FOR INTERGOVERNMENTAL COOPERATION ACT AGREEMENT (INCOMING FUNDS)

MEMORANDUM FOR: Director, Office of Management & Information

FROM: *[Director, OAR Program/Staff Office/Laboratory ]*

SUBJECT: An Intergovernmental Cooperation Act Agreement between *[name of requesting State or local agency]* and *[name of the servicing OAR Program/Staff Office/Laboratory]*

Enclosed is a new Intergovernmental Cooperation Act Agreement between OAR and the *[name the requesting State or local agency]* entitled, " \_\_\_\_\_," for your review, approval, and transmittal to OGC clearance. *[If the action is an amendment to an existing Agreement, identify the OAR Task Code and/or NOAA Control Number for the original Agreement or last amendment cleared. Also identify the name of the AGC/ADMIN staff attorney who reviewed the last action, if known.]*

The proposed Agreement includes a Statement of Work (and/or Proposal) and a budget breakout of total project costs, including direct labor and the appropriate overhead rate, as determined by the NOAA Office of Finance and Administration. NOAA/OAR will achieve full cost recovery in compliance with the NOAA-wide Standardized Labor Distribution Worksheet Procedures issued June 26, 1996.

We have determined that *[name of the servicing OAR Program/Staff Office/Laboratory]* is providing similar services for its own use under the policies set forth in OMB Circular A-76, Performance of Commercial Activities. In addition, in accordance with the policies set forth in Circular No. A-76, *[name of the servicing OAR Program/Staff Office/Laboratory]* (not the requesting State of local agency as set forth in OMB Circular A-97) certifies that such services cannot be procured reasonably and expeditiously by it through ordinary business channels and will not involve any additions of staff or outlays for additional equipment or other facilities solely for the purpose of providing such services, (except where the costs thereof are charged to the user of such services.

*[If the proposed Agreement is not submitted two months before the start date, provide a (1) an explanation as to why the two-month clearance processing time was not adhered to and (2) an impact assessment on the requesting agency s and/or OAR s program(s), if proposed Agreement is not cleared expeditiously by the start date.]*

The following additional information is provided to be of assistance to the clearance process:

Name of Funding/Requesting Agency:

Funding/Requesting Agency Organization Code:

Amount of Incoming Funds: **\$/dollar amount./**

Funding/Requesting Agency Legal Authority: 31 U.S.C. § 6505, Intergovernmental Cooperation Act  
Requesting Agency's Programmatic Authority: ***[statute that authorizes the State to engage in those type of activities contemplated under the Agreement.]***

OAR's Legal Authority: 31 U.S.C. § 6505, Intergovernmental Cooperation Act

OAR's Programmatic Authority: ***[statute that authorizes OAR to provide those types of services contemplated under the Agreement.]***

Number of FTEs Required:

Subject/Key Word:

New/Existing Agreement:

Amendment No. and the OAR Task Code and/or Effective Date of date Underlying Agreement (if applicable):

Period of Performance:

OAR's Technical Point of Contact/Telephone No.:

OAR's Administrative Point of Contact/Telephone No.:

Should you have any technical or administrative questions, please contact the appropriate individual designated above.

Enclosures (3)

Proposed Intergovernmental Act Agreement

Budget Breakout

## **Special Agreements (33 U.S.C. 883e Agreements)**

### **PLEASE NOTE:**

**33 U.S.C. 883e Agreements are used in very rare and unique situations in OAR. This section is included to provide the user of this manual with the complete range of agreements available.**

## **Section F. Special Agreements (33 U.S.C. 883e Agreements)**

### **F.01. Description and Requirements**

a. **Statutory Requirements.** The Coast and Geodetic Survey Act of 1947, commonly referred to as the Organic Authority, 33 U.S.C. §§ 883e, authorizes the Secretary of Commerce to enter into cooperative agreements with various entities, and to receive and expend funds made available by, any State or subdivision thereof, any Federal agency, or any public or private organization, or individual, for surveys or investigations authorized in 33 U.S.C. § 883a *et. seq.*, or for performing related surveying and mapping activities, including special-purpose maps, and for the preparation and publication of the results thereof.

The Coast and Geodetic Survey Act of 1947, 33 U.S.C. §§ 883a *et seq.* comprises the basic NOAA authority to:

1. develop, price, and disseminate aeronautical, and nautical charts and related information;
2. conduct hydrographic , topographic, and geodetic control surveys, and geophysical measurements;
3. conduct tide and current observations and investigations for determining longitude and latitude;
4. collect and disseminate geomatic data;
5. research cartographic methods and geophysical sciences; and
6. acquire and operate vessels and observatories as well as lease sites as necessary for these activities.

OAR s Program/Staff Offices/ Laboratory that engage in any one or more of these aforementioned activities can enter into a 33 U.S.C. 883e Reimbursable Agreement. *[See Exhibit F-1, Model 33 U.S.C. 883e Agreement. ]*

b. **Other Requirements.** The following requirements also apply when you enter into a 33 U.S.C. § 883e Agreement.

1. **Payments.** Title 33 U.S.C. § 883e authorizes NOAA to perform certain services for various entities that are for surveys or investigations authorized in 33 U.S.C. § 883a *et. seq.*, or for performing related surveying and mapping activities, including special-purpose maps, and for the preparation and publication of the results thereof. The type of payment received for these types of services is not equivalent to a payment from the public, rather it is a collaborative effort to work on specific cooperative ventures where the costs are shared. Therefore, section 11.7 (a) (3) of the OMB Circular A-34, which requires NOAA to collect all reimbursements in advance of doing any work does not apply to 33 U.S.C. 883e Agreements. Prime examples of such an arrangement are the Geodetic Advisor Program Agreements that NOS through the National Geodetic Survey (NGS) enter into with various State agencies. Therefore, there is

explicit authority to be reimbursed after NOAA has spent the cost of providing the service; therefore, advance payment would not be required. *[See Exhibit E-1, Model 33 U.S.C. 883e Agreement. ]*

b. **Other Specific Authorities for Operating Unit Special Agreement.** The work to be performed under a Special agreement is usually related to the specific mission of the operating unit. Special agreements may allow an operating unit latitude in a specific area. This is a type of agreement for which the operating unit has specific authority and may involve funds. For example, NOS enters into agreements to fulfill its mission as trustee of natural resources under the following statutes and regulations: The Oil Pollution Act, 33 U.S.C. §§ 2710 et seq. (and scattered); the Clean Water Act, 33 U.S.C. §§ 1251 et seq. and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. These statutes may also be invoked as programmatic authorities for these types of Agreement. *[See Appendices D, E, and F for a summary of the Most Common Legal and Programmatic Authorities that NOS invokes in its Agreements.]* However, there may be other applicable statutes but either they have not been used or fully reviewed regarding the scope of their agreement authority. Such statutes should be looked at on a cases-by-case basis with the assistance of your servicing legal counsel. Improper use of these special authorities may lead to Congressional criticism and revocation of the authority. Consult with a GCOS or GCNR staff attorneys if you need additional help in selecting the appropriate legal and programmatic authority before entering into this type of Agreement.

#### F.02. **REVIEW AND CLEARANCE PROCEDURES.**

a. **Submitting the Proposed 33 U.S.C. § 883e Agreement.** *[Follow the review and clearance procedures set forth in Part 4., REVIEW AND CLEARANCE PROCEDURES. ]*

b. **Using the 33 U.S.C. § 883e Reimbursable Agreement Checklist.** To ensure the completeness and accuracy of the proposed 883e Agreement and supporting file documentation, the Project Officer should review the draft agreement using *Exhibit F-2, 33 U.S.C. 883e Reimbursable Agreement Checklist*, before submitting the proposed agreement file to the Director OMI, Management and Organizational Development team, for review and clearance.

c. **Preparing the Transmittal Memorandum.** All new 33 U.S.C. 883e Agreements or amendments thereto must be forwarded to the Director OMI, *via* a transmittal memorandum. The transmittal memorandum for the proposed agreement should be addressed and sent to the Director OMI by the OAR Program/Staff/ Laboratory Director initiating or sponsoring the agreement. The Management, Organizational and Development Team is responsible for reviewing and obtaining legal clearance of all 33 U.S.C. 883e Agreements, amendments, and renewals thereto from NOAA-OGC sub offices (e.g., GCOS, GCNR).

1. **Executive Summary.** The transmittal memorandum serves as an Executive Summary and should include the following information. (a) OAR has determined that the services covered by this Agreement are consistent with and further the policy of the United States Government of relying on the private enterprise business channels. (b) Similar services are being provided for its own use under the policies set forth in OMB Circular A-76, Performance of Commercial Activities. ©) In addition, in accordance with the policies set forth in Circular No.

A-76, the Program/Staff Office/Laboratory (servicing entity) certifies that such services cannot be procured reasonably and expeditiously by it through ordinary business channels. (d) OAR has determined that the services covered by this Agreement are not in competition with private enterprise and will serve in the best interest of the Federal Government. (e) The undertakings are consistent with OAR's programs and will not cause a diversion of resources to the detriment of our basic programs. Further, the results of the service will not lead to controversy that will have an adverse effect on the Department's reputation, and no exclusive proprietary interest will accrue to the other Party to this Agreement.

**2. Additional Information to aid in the Clearance Process.** The transmittal memorandum should also include the following additional information to aid in the clearance process: (a) Name of the Participating Agencies; (b) OAR's Organization Code; (c) Requesting Agency's Code, if available; (d) Incoming Funds; (e) Funding Agency; (f) Number of OAR's FTEs Required; (g) OAR's Legal Authority; (h) OAR's Programmatic Authority; (i) Other Agency's Programmatic authority; (j) Subject/Key Word; (k) New/Existing Agreement; (l) Amendment No. and the OAR's Task Code or the Effective Date of the Underlying Agreement, if an OAR Task Code was not assigned; (m) Period of Performance; (n) OAR's Technical Point of Contact and Telephone Number; and (o) OAR's Administrative Point of Contact and Telephone Number. ***/See Exhibit F-3, Sample 33 U. S.C. 883e Reimbursable Agreement Transmittal Memorandum./***

**F.0.3. APPROVAL AND SIGNATURE AUTHORITY.** *[Follow the approval and signature authorities set forth in Part 4., Section C.02., Approval/Signature Authorities for Agreements Involving Incoming Funds (Receivable Agreements) or Joint Project Agreements. ]*



**EXHIBIT F-1**

**MODEL OPERATING UNIT S SPECIAL AGREEMENT**

**A REIMBURSABLE AGREEMENT**

**PURSUANT TO**

**TITLE 33 U.S.C. § 883e**

**BETWEEN**

*[Name of other Party]*

**AND**

*[Name of OAR Program/Staff Office/Laboratory ]*

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**U.S. DEPARTMENT OF COMMERCE**

**THROUGH WHICH**

*[State summarily what the Parties will do, e.g., the Parties  
will cooperate on \_\_\_\_\_ ]*

**OAR Task Code: (number)**

*[Insert the OAR task code number ]*

## I. **PARTIES**

This Operating Unit Special Agreement establishes a cooperative relationship between the *[name of other Party]* and *[name of the servicing OAR Program/Staff Office/Laboratory]*, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC), through which *[state summarily what the Parties will do, e.g., The Parties will cooperate on \_\_\_\_\_]*

## II. **AUTHORITIES**

A. The legal authority for NOAA and *[name of other Party]* to enter into this Agreement is 33 U.S.C. § 883e, which provides that the Secretary of Commerce is authorized to enter into cooperative agreements with, and to receive and expend funds made available by, any State or subdivision thereof, any Federal agency, or any public or private organization, or individual, for surveys or investigations authorized in 33 U.S.C. § 883 *a et seq.* or for performing related surveying and mapping activities, including special-purpose maps, and for the preparation and publication of the results thereof; and

B. The programmatic authority for *[name of other Party]* is *[if the other Party is a Federal Agency, State or local government organization, set forth the other Party's programmatic authority]*.

## III. **BACKGROUND AND PURPOSE**

Pursuant to this Agreement, the Parties will \_\_\_\_\_.

*[Provide a clear and succinct explanation of the objective and purpose of the Agreement; it may be necessary to provide background so that it is clear why the Department is undertaking this particular activity].*

## IV. **RESPONSIBILITIES OF THE PARTIES**

*[In this section, you just set forth the actual obligations of the Parties, i.e., all of the specific nuts and bolts, so that it is clear to each Party what they are obligated to do under this Agreement.]*

A. OAR agrees to:

1. \_\_\_\_\_ *[List all the activities your line office promises to undertake as its responsibilities under the Agreement, e.g., perform oceanographic research, etc; and*

2. \_\_\_\_\_.

B. *[Name of other Party]* agrees to:

1. *[List all the activities the other Party promises to undertake as its responsibilities under the Agreement including delivery requirements, amount to be paid, and the details of such payments, e.g., whether payments will be monthly, quarterly, in advance, etc.]; and*

2. \_\_\_\_\_.

## **V. FUNDING AND REIMBURSEMENT ARRANGEMENTS**

*[Explain the details of how the other Party will pay for the goods/services, e.g., whether payments will be monthly, quarterly, etc.] [Also see the NOAA Reimbursable Task Plan Handbook Update, dated October 1999, and revised 01 October 2000, Section 2-03 1. (3) Payment Policy.]*

*Section 11.7 (a)(3) of OMB Circular A-34 does not apply to 33 USC 883e Agreements; however, if agreed to by the Parties as the preferred method for payment, include advance payment provisions. An advance payment schedule may be established within the reimbursable Agreement if the total estimated costs will exceed \$50,000 or the length of time to complete the work will exceed six months. You may also include estimated funding levels for subsequent years, if a multi-year term is contemplated by the Parties.*

*If applicable, for Federal agencies, include the Intra-governmental Payment and Collection (IPAC) code and billing address and contact person's name and telephone number. Indicate that NOAA is an IPAC agency and that billings to most Federal agencies will use IPAC on a monthly or advance basis.*

*Be sure to indicate whether the advance funding is with or without fiscal year limitations (e.g., no year funds). Also identify the method in which the financial transaction will be handled (e.g., CD 435, Procurement Request as a follow-through procurement document that will take care of the accounting transactions required by the terms of the Agreement.*

For example:

Within the terms of this Agreement, funding and reimbursements will be accomplished by the respective Parties entering into this Agreement in accordance with the fiscal responsibilities indicated herein.

The total cost liability of *[name of requesting agency]* is *[\$[dollar amount]]*.

Payment funds received shall be deposited to the NOAA appropriation from which the cost of providing the services under this Agreement has been paid or will be charged.\*

*\* This is explicit authority to be reimbursed after the servicing OAR operating unit has incurred costs for providing the requested services (i.e., an advance payment is not required by the Coast and Geodetic Survey Act, 33 U.S.C. 883e.)*

This Agreement is subject to the availability of funds and resources.

## VI. CONTACTS

The contacts of each Party to this Agreement are:

*[Name of NOAA contact]*  
*[Title of NOAA contact]*  
*[Address of NOAA contact]*  
Phone: *[phone number of NOAA contact]*  
Fax : *[fax number of NOAA contact]*  
E-mail: *[E-mail address of NOAA contact]*

*[Name of other Party s contact]*  
*[Title of other Party s contact]*  
*[Address of other party s contact]*  
Phone: *[phone number of other Party s contact]*  
Fax : *[fax number of other Party s contact]*  
E-mail: *[E-mail address of other Party s contact]*

The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other party in writing of such change.

## VII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION

This Agreement will become effective when signed by all the Parties. The Agreement will remain in effect through *[insert date]*, unless either terminated by (1) mutual written consent, (2) 30/60 days advance written notice by either Party, or (3) completion of the operation/ terms of this Agreement.

This Agreement may be amended within the scope of this Agreement, extended, or renewed at any time through the written mutual consent of the Parties. *[The Parties may also include in this paragraph language that will allow for either Party to issue a unilateral amendment or modification (i.e., a unilateral amendment will not require the signature/acceptance of the other Party; however, see Part 5., Section C, Processing Amendments or Annexes, before adding this language).]*

*[NOTE: If the Agreement will last longer than three years, the following sentence should be included in the Agreement: The Parties will review this Agreement at least once every three years to determine whether it should be revised, renewed, or canceled. ]*

## VIII. RESOLUTION OF DISAGREEMENTS

Nothing herein is intended to conflict with current Department of Commerce or (name of other agency) directives. If the terms of this Agreement are inconsistent with existing directives of either of the agencies entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished by either an amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of both Parties. *[NOTE: This paragraph is to be used only when the Agreement is with*

*another Federal Government agency.]*

Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

## IX. APPROVALS

This Agreement is entered into and made effective as of the date later in time indicated below.

\_\_\_\_\_  
*[Signature of person who has authority  
to bind other Party to the Agreement]  
[Type name of signatory for other Party]  
[Type title of other Party ]  
Type address of other Party]*

\_\_\_\_\_  
*[Date]*

\_\_\_\_\_  
*[Signature of OAR official who has  
authority to sign 883e Agreements]  
[Type name of OAR signatory]  
[Type title]  
[Type address of OAR office]*

\_\_\_\_\_  
*[Date]*

**Exhibit F-2**

**OPERATING UNIT 33 U.S.C. 883e AGREEMENT CHECKLIST**  
**(OAR RECEIVABLE AGREEMENT)**

	<u>YES</u>	<u>NO</u>
1. Does the Agreement include the following:		
a. Name of OAR Program/Staff Office/Laboratory	___	___
b. Project Title	___	___
c. OAR s Legal Authority (33 U.S.C. § 883e)	___	___
d. OAR s Programmatic Authority	___	___
e. Other Party s Programmatic Authority	___	___
f. Estimated Costs	___	___
g. Period/Duration of Agreement	___	___
h. Type of Other Party (Federal, State, or local agency, etc.)	___	___
i. Reviewers Initials and Dates on Automated Transmittal/Route Slip	___	___
j. Transmittal Memorandum	___	___
2. Is the Coast and Geodetic Survey Act authority being used appropriately?	___	___
3. Does the Agreement relate the objectives to the other Party s programmatic authority and its agency policies and goals?	___	___
4. Does the Agreement provide a comprehensive description of the terms to which the Parties are agreeing?	___	___
5. Does the Agreement provide only for collaborative effort of the Parties?	___	___
6. Does the Agreement include a budget breakout of total costs, including direct labor and the appropriate overhead/indirect rate?	___	___
7. Does the Agreement identify the type of funds (e.g., one-year or no-year funds) involved and its expiration date, if applicable?	___	___
8. Have you ensured that the NOAA/OAR is not receiving a profit?	___	___
9. If the Agreement is for an extended period of time, does it include a provision for review at least once every three years, to determine whether it should be revised, renewed or canceled?	___	___
10. If the action is a modification to an Agreement previously cleared by OGC, Assistant General Counsel for Administration(AGC/ADMIN), are signed copies of the underlying Agreement, prior Amendments, and the clearance memorandum included in the Agreement file? (If available, provide the name of the AGC/ADMIN staff attorney who reviewed the underlying Agreement.)	___	___

	<b><u>YES</u></b>	<b><u>NO</u></b>
11. If the Agreement is for a longer period than the current Fiscal Year (FY), does the Agreement include estimated funding levels for each of the subsequent years and include a provision that reads, Funding is currently available for this FY; however, performance beyond the current FY is contingent on the availability of funds?	<u>      </u>	<u>      </u>
12. Do the signature blocks reflect the appropriate signatory/approving officials per each participating Party s delegations of authority?	<u>      </u>	<u>      </u>

**SAMPLE TRANSMITTAL MEMO FOR AN OAR OPERATING UNIT  
33 U.S.C. 883e Agreement**

MEMORANDUM FOR: Director, Office of Management & Information

FROM: *[Director, OAR Program/Staff Office/Laboratory ]*

SUBJECT: A 33 U.S.C. 883e Reimbursable Agreement between *[name of other Party]* and the *[name of the servicing OAR Program/Staff Office/Laboratory]*

Enclosed is a new Reimbursable Agreement between the *[name of other Party]* and the Office of Oceanic and Atmospheric Research (OAR ), entitled, *[ name of Project, ]* for your review and approval, and transmittal to the DOC Office of General Counsel for clearance. *[If the action is an amendment to an existing Agreement, the memorandum should provide the OAR Task Code and/or NOAA Control Number for the original Agreement or last amendment cleared, and the name of the AGC/ADMIN staff attorney who reviewed the last action, if known.]*

The Agreement includes a Statement of Work (and/or Proposal) and a budget breakout of total project costs, including direct labor and the appropriate overhead rate as determined by the NOAA Office of Finance and Administration, unless a waiver has been obtained in accordance with the procedure set forth in the NOAA Budget Handbook. *[Delete any information that is not applicable to this specific Agreement.]*

*[If the funding to be provided by the sponsor is pass through money for contracts, cooperative agreements, or grants, the memorandum should so state and provide the control number of the Agreement if it already exists.]*

We have also determined that the services contemplated under this Agreement are not in competition with private enterprise and will serve the public interest. The contemplated undertakings are consistent with OAR s programs and will not result in diversion of resources to the detriment of basic OAR programs. Further, the results of the service will not result in controversy that will have an adverse effect on the Department s reputation and no exclusive proprietary interest will accrue to the other party to this Agreement.

*[If the proposed Agreement is not submitted two months before the start date, provide a (1) an explanation as to why the two-month clearance processing time was not adhered to and (2) an impact assessment on the requesting agency s and/or OAR s program(s), if the proposed Agreement is not cleared expeditiously by the start date.]*



The following additional information is provided to aid the clearance process:

Funding Agency: *[name of other Party.]*

Amount of Reimbursement: \$ *[dollar amount.]*

Other Agency's Programmatic Authority: *[statute that authorizes the other Party to engage in the types of activities contemplated under the Agreement]*

OAR Organization: *[name of OAR operating unit.]*

OAR's Legal Authority: 33 U.S.C. §§ 883e

OAR's Programmatic Authority: *[applicable 33 U.S.C. 883 citation.]*

Subject/Key Word:

New/Existing Agreement:

Period of Performance: Beginning and End Dates

Number of FTE(s) Required: *[number of Full Time Equivalents involved.]*

OAR's Technical Contact/Telephone No.:

OAR's Administrative Contact/Telephone No.:

If you have any technical or administrative questions, please contact the appropriate individual designated above.

Enclosures

Proposed Agreement with Statement of Work

Budget Breakout

## **Section G. General Collaborative Agreements - Agreements with No Funding Arrangements**

### **G.01. Description and Requirements**

a. **General Information.** In furthering its programs, OAR becomes involved with a large number of international, Federal, State, and local agencies, universities, and other public and private institutions. OAR management encourages the formulation of such relationships to foster OAR's vital mission objectives, to improve OAR's abilities to serve its customers, and to forge stronger ties with its Partners and other stakeholders. However, not all Agreements that OAR enters into involve funding arrangements. As such, OAR operating units may enter into General Collaborative Agreements with any legitimate entity, including Federal, State, local government agencies, non profit organizations. The use of General Collaborative Agreements is appropriate whenever (a) the arrangement does not involve funding, transfer or loan of equipment, or commitment of resources of any kind; (b) no specific project is defined, but an official documentation of the relationship is required because it may be of interest to third Parties, such as the Congress, State official, or university trustees; and (c) the relationship is expected to continue over an extended period of time, although typically, it can be terminated by either Party on relatively short notice.

OAR may enter into General Collaborative Agreements to formalize agreements (a) to exchange scientific information or data on a particular subject, when and if the data becomes available to either Party; (b) to develop a process or protocol exchange of information; (c) to designate liaisons or subject matter experts for certain issues; and (d) to agree on some future projects or joint endeavors that may or may not involve the negotiation of a specific funding instrument. NOAA Line Offices used to refer to such Agreements as Memorandums of Agreement (MOA) or Memorandums of Understanding (MOU). *[See Exhibit G-1, Model OAR General Collaborative Agreement. ]*

b. **Statutory Requirements.** As with any other Agreements, General Agreements have to include a specific statutory or regulatory citation which authorizes the objectives of the Agreement. *[See Appendix B, C, and D, for a summary of statutes that authorize NOAA/OAR to enter into Agreements and to engage in certain types of activities.]*

### **G.02. Review and Clearance Procedures**

a. Submitting the Proposed General Collaborative Agreement. *[Follow the review and clearance procedures in Part 4., REVIEW AND CLEARANCE PROCEDURES. ]*

b. **Using the General Collaborative Agreement Checklist.** To ensure the completeness and accuracy of the proposed General Collaborative Agreement and supporting file documentation, the Project Officer should review the draft agreement using *Exhibit G-2, General Collaborative Agreement Checklist*, before submitting the proposed agreement file to the Director OMI, Management and Organizational Development team for proper dissemination of material and to insure completeness and accuracy.

c. **Preparing the Transmittal Memorandum.** All new General Collaborative Agreements, amendments, modifications thereto, must be forwarded to the Director OMI, via a transmittal memorandum. The transmittal memorandum for the proposed agreement should be addressed and sent to the Director OMI by the OAR Program/Staff/Laboratory Director initiating or sponsoring the agreement. The Management, Organizational and Development Team is responsible for reviewing and obtaining legal clearance of all General Collaborative Agreements, amendments, and renewals thereto from appropriate legal counsel office.

1. **Executive Summary.** The transmittal memorandum serves as an Executive Summary and should include the following information. (a) Briefly describes the purpose and objectives of the Agreement. (b) Includes general information about the need for documenting the collaborative relationship even though it does not involve funding, transfer or loan of equipment, or commits resources or any kind. (c) Briefly explain the interest of third parties such as the Congress, State Legislatures, University Trustees, and the general public, if that is the case.

2. **Additional Information to aid in the Clearance Process.** The transmittal memorandum should also include the following additional information to aid in the clearance process: (a) Name of the Participating Agencies; (b) OAR's Organization Code; (c) Other Party's Agency Code, if available; (d) OAR's Legal Authority; (e) OAR's Programmatic Authority; (f) Other Party's Programmatic Authority; (g) Subject/Key Word; (h) New or Existing Agreement; (i) Amendment No. and the OAR Agreement Code or the Effective Date of the Underlying Agreement, if an OAR Agreement code was not assigned; (j) Period of Performance; (k) OAR's Technical Point of Contact and Telephone Number; and (l) OAR's Administrative Point of Contact and Telephone Number. *[See Exhibit G-3, Sample General Collaborative Agreement Transmittal Memorandum. ]*

E.0.3. **Approval and Signature Authority.** General Collaborative Agreements should be signed at the lowest level to which significant responsibilities have been delegated. The Assistant Administrator, Office/Staff/Laboratory Directors shall sign all General Collaborative Agreements for which they have been delegated programmatic authority, except any proposed Agreement which involves a major policy decision or has a potentially controversial or public interest implication or affects the Under Secretary's authority, positions or operations. For these agreements OAR Headquarters will secure approval and clearance at the appropriate level.

*[Follow the approval and signature authority set forth in Part 4., Section C.03. Approval/Signature Authorities for General Collaborative Agreements. ]*

**EXHIBIT G-1**

**MODEL OAR GENERAL COLLABORATIVE AGREEMENT**

**A GENERAL COLLABORATIVE AGREEMENT PURSUANT TO**

*[Identify the Appropriate Statutory Authority]*

**BETWEEN**

*[Name of OAR Program/Staff Office/ Laboratory ]*

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**DEPARTMENT OF COMMERCE**

**AND**

*[Name of other Party]*

**OAR Task Code: (number)**

*[Insert the OAR task code number ]*

## **I. PARTIES AND PURPOSE**

This General Collaborative Agreement is between the Office of Oceanic and Atmospheric (OAR ) through *[name of OAR Program/Staff Office/ Laboratory]*, and *[name of other Party]* wherein *[provide a clear and succinct explanation of the objective and purpose of the Agreement; it may be necessary to provide background so that it is clear why the Department is entering into this particular Agreement. Also explain the interest of third Parties such as the Congress, State Legislatures, University Trustees, if such is the case.]*

## **II. AUTHORITIES AND REFERENCES**

*[Cite the statute, regulation or directives, which authorizes the objectives of the proposed Agreement e.g., applicable Public Law, U.S. Code citations, Executive Orders or GAO directives. Also cite any other pertinent references such as agency directives, or previous Agreements.]*

The authorities for OAR and *[name of other Party]* to enter into this General Agreement are:

A. *[Cite the appropriate statute that authorizes OAR to enter into this Agreement see Appendix B or D for a summary of statutes that authorizes NOAA/OAR to enter into Agreements.]*

B. *[Cite OAR s programmatic authority for engaging in the types of activities contemplated under this Agreement;]* and

B. *[If the other Party is a Federal Agency, State or local government organization, set forth the other Party s legal authority under which it is entering into this Agreement].*

## **III. DEFINITIONS**

*[Define terminologies which are unique to a specific program or are subject to variable definitions. This section should include definitions of technical and non technical terminology as may be applicable to the provisions of this Agreement.]*

## **IV. RESPONSIBILITIES OF THE PARTIES**

*[In this section, you just set forth the actual obligations of the Parties, i.e., all of the specific nuts and bolts, so that it is clear to each Party what they are obligated to do under this Agreement.]*

A. OAR agrees to:

1. \_\_\_\_\_ *[List all the activities your line office promises to undertake as its responsibilities under the Agreement, e.g., meet one to two a year and as needed to discuss projects that meet the purposes of this Agreement. etc.];*and

2. \_\_\_\_\_.

B. *[Name of other Party]* agrees to:

1. *[List all the activities the other Party promises to undertake as its responsibilities under the Agreement including delivery requirements, amount to be paid, and the details of such payments, e.g., whether payments will be monthly, quarterly, in advance, etc.]; and*

2. \_\_\_\_\_.

## V. CONTACTS

The contacts of each Party to this Agreement are:

*[Name of the OAR contact]*

*[Title of the OAR contact]*

*[Address of the OAR contact]*

Phone: *[phone number of the OAR contact]*

Fax : *[fax number of the OAR contact]*

E-mail: *[E-mail address of the OAR contact]*

*[Name of other Party s contact]*

*[Title of other Party s contact]*

*[Address of other Party s contact]*

Phone: *[phone number of other Party s contact]*

Fax : *[fax number of other Party s contact]*

E-mail: *[E-mail address of other Party s contact]*

The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other party in writing of such change.

## VI. OTHER TERMS AND CONDITIONS

*[Briefly explain any limitations restrictions of the General Agreement.] For example:*

This Agreement defines in general terms the basis on which the Parties will cooperate, and as such, does not constitute a financial obligation to serve as a basis for expenditures. Expenditures of funds, human resources, equipment, supplies, facilities, training, public information, and technical expertise will be provided by each signatory agency to the extent that their participation is required and resources are available.

This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or contribution of funds between the Parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures. Such activities will be documented in separate Agreements, with specific projects between the Parties spelled out. The separate Agreements will reference this General Agreement.

This Agreement in no way restricts the Parties from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

This Agreement does not obligate the Parties to expend appropriations or to enter into any Agreements, contracts, or other obligations.

## **VII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION**

This Agreement will become effective when signed by all the Parties. The Agreement will remain in effect through *[insert date]*, unless either terminated by (1) mutual written consent, (2) 30/60 days advance written notice by either Party, or (3) completion of the operation/ terms of this Agreement.

This Agreement may be amended within the scope of this Agreement, extended, or renewed at any time through the written mutual consent of the Parties. *[The Parties may also include in this paragraph language that will allow for either Party to issue a unilateral amendment or modification to effect an administrative change (i.e., a unilateral amendment will not require the signature/acceptance of the other Party; however, see Part 5., Section C, Processing Amendments or Annexes, before adding this language).]*

*[NOTE: If the Agreement will last longer than three years, the following sentence should be included in the Agreement: The Parties will review this Agreement at least once every three years to determine whether it should be revised, renewed, or canceled. ]*

## **VIII. RESOLUTION OF DISAGREEMENTS**

Nothing herein is intended to conflict with current Department of Commerce or (name of other agency) directives. If the terms of this Agreement are inconsistent with existing directives of either of the agencies entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished by either an amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of both Parties. *[NOTE: This paragraph is to be used only when the Agreement is with another Federal agency.]*

Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

## **VIII. APPROVALS**

This Agreement is entered into and made effective as of the date later in time indicated below.

\_\_\_\_\_  
*[Signature of person who has authority  
to bind other Party to the Agreement]  
[Type name of signatory for other Party]  
[Type title of other Party ]  
Type address of other Party]*

\_\_\_\_\_  
*[Signature of OAR official who has  
authority to sign Agreements]  
[Type name of OAR signatory]  
[Type title]  
[Type address of OAR office]*

\_\_\_\_\_  
*[Date]*

\_\_\_\_\_  
*[Date]*

## EXHIBIT G-2

### GENERAL COLLABORATIVE AGREEMENT CHECKLIST

	<u>YES</u>	<u>NO</u>
1. Does the Agreement include the following:		
a. Name of OAR Program/Staff Office/Laboratory	___	___
b. Project Title	___	___
c. OAR s Legal Authority	___	___
d. OAR s Programmatic Authority	___	___
e. Other Party s Programmatic Authority	___	___
f. Period/Duration of Agreement	___	___
g. Type of Other Party (Federal, State, or local agency, etc.)	___	___
h. Reviewers Initials and Dates on Automated Transmittal/Route Slip	___	___
i. Transmittal Memorandum	___	___
2. Does the Agreement cite an appropriate statute, regulation, or directive, which authorizes the objectives of the Agreement?	___	___
3. Does the Agreement relate the objectives to the cited statutory or regulatory authority and to the other Party s agency policies and goals?	___	___
4. Does the Agreement provide a comprehensive description of the terms to which the Parties are agreeing?	___	___
5. Does the Agreement provide only for collaborative effort of the Parties?	___	___
6. Does the Agreement state that the Parties commitments under the Agreement are subject to the availability of funds and resources?	___	___
7. If the Agreement is for an extended period of time, does it include a provision for review at least once every three years, to determine whether it should be revised, renewed or canceled?	___	___
8. If the action is a modification to an Agreement previously cleared by OGC, Assistant General Counsel for Administration(AGC/ADMIN), are copies of the underlying Agreement and the clearance memorandum included in the Agreement file? (If available, provide the name of the AGC/ADMIN staff attorney who reviewed the underlying Agreement.)	___	___
12. Do the signature blocks reflect the appropriate signatory/approving officials per each participating Party s delegations of authority?	___	___



**EXHIBIT G-3**  
**SAMPLE TRANSMITTAL MEMO FOR**  
**A GENERAL COLLABORATIVE AGREEMENT**

MEMORANDUM FOR: Director; Office of Management and Information

FROM: *[Director, OAR Program/Staff Office/Laboratory ]*

SUBJECT: A General Agreement between the *[name of OAR Program/Staff Office/Laboratory]*, Office Of Oceanic and Atmospheric Research, and *[name of other Party]*

Enclosed is a new General Agreement between *[name of OAR Program/Staff Office/Laboratory ]*, OAR , and *[name of other Party]*, entitled,

XXXXXXXXXXXXXXXXXXXXX, for your review, approval, and transmittal to the Office of General Counsel for clearance. (If the action is an Amendment to an existing Agreement, the memorandum should provide the OAR Agreement code and/or NOAA Control Number for the original Agreement or last amendment cleared and the name of the AGC/ADMIN staff attorney who reviewed the last action, if known.) The Agreement addresses the purpose and scope, cites references and authority, includes a description of the understanding between the Parties; briefly explains the interest of third Parties such as the Congress, State Legislatures, or University Trustees, and states the term of the Agreement.

***[If the proposed Agreement is not submitted two months before the start date, provide a (1) an explanation as to why the two-month clearance processing time was not adhered to and (2) an impact assessment on the requesting agency s and/or OAR s program(s), if proposed Agreement is not cleared expeditiously by the start date.]***

The following additional information is provided to aid the clearance process:

Participating Agencies:

OAR s Agency Organization Code:

OAR s Legal Authority: *[statute, regulation, or directive which authorizes OAR to enter into the Agreement]*

OAR s Programmatic Authority: *[statute, regulation, or directive which authorizes OAR to engage in those types of activities contemplated under the Agreement]*

Other Party s Programmatic Authority: *[statute, regulation, or directive which authorizes the other Party to engage in those types of activities contemplated under the Agreement]*

Subject/Key Word:

New/Existing Agreement:

Period of Agreement:

Amendment No. and the OAR Task Code and/or Effective Date of date Underlying Agreement (if applicable):

OAR s Technical Contact/Telephone No.:

OAR s Administrative Contact/Telephone No.:

Should you have any technical or administrative questions, please contact the appropriate individual designated above.

Enclosures

Draft General Collaborative Agreement

## **PART 4. - REVIEW AND CLEARANCE PROCEDURES**

### **Section A. Submitting the Proposed Agreement for Clearance and Approval**

The Office of Director OMI, Management and Organizational Development Team is responsible for reviewing and obtaining OGC clearance for all agreements, annexes or amendments thereto.

**A.01. Review and Clearance Time Frame.** All new agreements subject to review requirements, as well as amendments or modifications to existing agreements, must be submitted to the Director OMI, Management and Organizational Development team, at least 2 months before the start date. This will allow time for review by OAR Headquarters and clearance by the NOAA-OGC or DOC-OGC before the agreement is effective. Any agreement not submitted 2 months before the start date must be accompanied by a complete explanation, signed by the field or Headquarters Office Director, as to why submission 2 months in advance was not possible.

**A.02. Existence of a Cleared Agreement.** A written agreement between OAR and the sponsor must be in existence prior to performance of any work. Any agreement that has already been initiated without an official clearance memorandum constitutes an unauthorized action and must be ratified by the AA, OAR or his designee in accordance with the procedures set forth in Part 5., Section D, Ratifying Unauthorized Agreements, of this User Manual.

### **Section B. Obtaining Legal Clearance**

**B.01. General Legal Review Requirements.** All new interagency and other special agreements, as well as amendments or modifications or annexes to existing agreements, are subject to legal review and clearance, unless excepted herein. Legal review is not just another bureaucratic hoop that Program Offices/Laboratories must jump through. DOC-OGC and NOAA-OGC staff attorneys are responsible for ensuring that OAR's Agreements and other relationships with outside parties: (a) comply with all applicable laws and DOC policies; (b) are consistent in approach among all the bureaus of DOC; (c) are not perceived by the general public as unfair, unethical, or inappropriate; (d) protect the Department's special authorities from abuse; and (e) get the proposed activity or project done in a cost effective and efficient manner.

The General Law Division issues over 850 written opinions annually, with most opinions relating to expenditures of funds and reviews of agreements. As there are currently only 11 attorneys in the Division, it is imperative that Program Offices observe the two month review and clearance processing time before the start date to allow time for review by OAR, GCOS/GCNR and DOC-OGC and clearance by DOC-OGC before the agreement is effective.

**B.02. Agreements or Amendments Cleared by DOC-OGC.** The OGC through the General Law Division of the Office of Assistant General Counsel for Administration (AGC/ADMIN) reviews and officially clears agreements entered into between NOAA's Line Offices (LOs) and outside agencies (e.g., Federal, state and local government agencies; non profit organizations; and other public and private organizations) to ensure that the LOs are complying with all the laws pertaining to the use and obligation of funds. The DOC-OGC has final official clearance authority for the following:

- a. Economy Act Agreements or non-administrative amendments thereto, involving incoming or outgoing funds over \$250,000
- b. Joint Project Agreements and non-administrative amendments thereto;
- c. Special Studies Agreements and non-administrative amendments thereto;
- d. Intergovernmental Cooperation Act Agreements and non-administrative amendments thereto;
- e. International Agreements and non administrative amendments thereto, after programmatic review by NOAA General Counsel for International Law (GCIL).
- f. General Agreements and non administrative amendments thereto between OAR and non Federal and non-State agencies
- g. Any type of agreements or amendments thereto that have been referred by GCOS or GCNR to AGC/ADMIN for final clearance.

**B.03. Agreements and Amendments Reviewed by NOAA-OGC.** The NOAA-OGC reviews and provides guidance on OAR interagency and other special agreements that need formal clearance from DOC-OGC. The NOAA-OGC staff attorneys assist the DOC-OGC by providing programmatic legal support to NOAA Line Offices. For example, the NOAA Assistant General Counsel for Atmospheric and Space Services Research provides the first line of legal support to OAR Program Offices. As a general notion, if an OAR Program/Staff Office or Laboratory is contemplating entering into some sort of relationship with any party, that office should contact one of the NOAA/GCW staff attorneys as early as possible so they can steer you in the right direction and provide guidance.

The DOC-OGC has delegated the official clearance authority to GCOS and GCNR for those OAR agreements that invoke statutory or regulatory authorities under which NOAA/OAR is the lead agency and or under which NOAA/OAR has a significant role in implementing or enforcing the statutes, and/or NOAA/OAR has been designated as a resource trustee.

- a. Economy Act Agreements or amendments thereto, involving incoming or outgoing funds of \$250,000 or less. *(Current review threshold is \$100,000 and under)*
- b. General Collaborative Agreements which do not obligate funds and resources between OAR and Federal and State agencies, however, when such agreements involve high visibility or controversial issues, GCOS or GCNR may refer such agreements to DOC-OGC for final clearance.
- c. Administrative amendments covering (1) extensions with no significant change to the original Scope of Work (SOW); (2) annual work and funding plans (i.e., incremental funding transactions) for subsequent years of work described in the original Agreement cleared by the DOC-OGC, and there is no significant change to the original SOW.

***[Note: If there is any question that an Agreement may violate the Antideficiency Act, Appropriation laws, or the Purpose Statute, the Agreement must be reviewed and***

*formally cleared by DOC-GC.]*

### **Section C. Executing the Agreement - Approval and Signature Authorities**

#### **C.01. Approval/Signature Authorities for Agreements Involving Outgoing Funds (Payable Agreements)**

The OAR Delegations of Authority dated March 2002 , sets forth the delegations and signatory approvals for interagency transfer of funds (outgoing funds), as authorized by the Budget Handbook Chapter 2-03, section 2. f., Delegations of Authority, dated March, 2002.

### **Section D. Transmitting Cleared Agreements to the Originating OAR Program/Staff Office**

Upon receipt of the cleared agreement from AGC/ADMIN, the Management, Organizational and Development Team on behalf of the AA, OAR , will send the clearance memorandum and the cleared agreement to the originating OAR office via an approval memorandum. If signature authority is at the AA level, the Director OMI will obtain the signature of the AA or designee for the acceptance document before transmitting the approval memorandum and cleared agreement to the originating OAR office for transmittal to the other Party. If the agreement is \$250,000 or less, the cleared agreement and clearance document will be forwarded to the appropriate official for signature and subsequent transmittal to the other Party. OAR will establish a reimbursable task number for cleared reimbursable agreements.

After receipt of the cleared agreement from the Management & Organizational Development Team, the approving official will prepare a transmittal memorandum for the approving official of the other Party and request that he sign the required number of cleared agreements signature pages (generally three sets are attached), retain one original set for his records, and return the other two original signature copies to the OAR originating office. Upon receipt of the two original signature copies of the fully executed agreement, the OAR Program/Staff office will provide one original set or certified copy of the fully executed document to the Management and Organizational Development Team for their central depository, referencing the OAR Agreement code.

## PART 5. - ADMINISTRATION OF AGREEMENTS

### Section A. General Requirements for Administering Agreements

A.01. **Monitoring Agreements.** OAR Project Officers or their designees must monitor each agreement, as necessary, to track payments and progress and confirm the need for revising or continuing the agreement. In addition, an annual evaluation of agreements with a duration of more than 12 months should be conducted to assure compliance with terms of the agreement and continuing need for the agreement.

A.02. **Record Keeping.** Each of the OAR Program/Staff Offices/Laboratory is responsible for its own record keeping. Within OAR, each of the Program/Staff Office/Laboratories manages and maintains its own official files. The Program/Staff Office/and Laboratory Directors must ensure that their respective office level agreement files are kept accurate, current, and complete.

a. **Official Agreement File.** The official file for each agreement is a considered a Federal record. A federal record is any recorded information relating to the work of your operating unit or office regardless of media. It can be paper documents, photographs, maps, motion pictures, and electronic records such as computer tapes, disks, and web sites. Email messages are also records when they meet the definition of Federal records. *[See the following web site for more information on NOAA s email policy:*

*<http://www.rdc.noaa.gov/~foia/asdhome/record-rev1.htm.>*

The agreement official file must contain the following documents and information:

1. A signed copy of the fully executed agreement and all executed amendments, revisions, or changes thereto.
2. A copy of all correspondence generated or received by the initiating OAR operating unit related to the agreement.
3. A copy of all legal and OAR management clearance documents obtained in developing and completing the agreement.
4. All justifications and the basis for each justification connected to the agreement.
5. A copy of the request and decision reached on all requests for waivers.
6. Other pertinent material.

b. **Retention.** The official agreement file must be retained in accordance with the applicable Records Retention Schedule. The Schedule is a document approved by the National Archives and Records Administration, which provides authority for the final disposition of recurring or non-recurring records. The records can be in either written or electronic form.

## **Section B. General Requirements for Issuing Amendments/Modifications or Annexes**

This section prescribes policies and procedures for preparing and processing agreement amendments or modifications, and/or annexes. For purposes of this User Manual, the terms amendments and modification are used interchangeably.

Parties to an existing agreement can generally amend or modify any of the terms and conditions of the agreement by invoking the Article or Section entitled, Amendments or Modifications found in that agreement. The amendment heading should identify the amendment number and original OAR Agreement code number and the exact title of the originating agreement. The amendment document itself should only reference those articles or sections of the originating agreement that need amending. It is not necessary to reiterate all the other terms and conditions of the originating agreement. OAR Project Officers should ensure that the last paragraph entry of any proposed amendment includes the statement, All the other terms and conditions of the originating Agreement remain in full force and effect. Review and clearance procedures for amendments or modifications generally follow those same procedures followed for the original agreement. However, amendments that are administrative in nature (e.g, no-costs amendments that extend the period of performance, or change the technical or administrative points of contact in a given agreement) are generally only reviewed by OAR and NOAA-OGC sub-office level.

### **B.01. Processing Amendments/Modifications**

a. An agreement amendment or modification means any written change in the terms of an active (underscored for emphasis) agreement. Generally, an agreement includes amendments provision that permits either Party to issue amendments in designated areas within the general scope of the contract. These are accomplished by either Party issuing a written amendment or modification to an active agreement. Such amendments or modifications will reference the OAR Task Code identified in the original agreement.

b. The Party providing the services must continue performance as set forth in the agreement as changed, except that in cost-reimbursement or incrementally funded agreements, the Party providing the services is not obligated to continue performance or incur costs beyond the limits established in the limitation of cost or funds provisions in the agreement.

c. Types of Agreement Amendments or Modifications. Amendments or modifications are of the following types:

1. **Bilateral.** A bilateral amendment or modification is an agreement change that is signed by the approving officials of each Party. Bilateral modifications are used to

(a) Make adjustments as a result of an Economy Act transactions (e.g., Adjustment on the basis of actual costs shall be made as agreed upon by the Federal agencies.);

(b) Make changes within the original scope of the underlying agreement;

©) Either Party to an active agreement shall not execute an amendment or modification that causes or will cause an increase in funds without having first obtained a certification of funds availability, except for modifications to existing agreements that are (a) conditioned on

availability of funds; or (b) contain a limitation of cost or funds provision;

2. **Unilateral.** A unilateral amendment or modification is an agreement change that is signed only by the Party initiating the change. Unilateral amendments or modifications are only issued if specifically provided for in the underlying agreement. Unilateral amendments are used for example, to effect administrative changes. Administrative change or amendment means an agreement change, in writing, that does not affect the substantive rights of the parties (e.g., a change in the paying office or the appropriation data). *[Note: If an Agreement does not provide for unilateral amendments, administrative changes should be issued as a bilateral amendment subject to the acceptance and signature of the other Party. Also, Unilateral amendments should also be submitted to the Director OMI, Management and Organizational Development team for clearance and tracking purposes. ]*

B.02. **Processing Annexes.** An annex to an existing agreement means a subsidiary expansion or supplementary structure or statement negotiated by the Parties in accordance with agreed-upon annexation procedures prescribed in the underlying agreement.

B.03. **Review and Clearance for Amendments/Modifications or Annexes**

a. Only the approving officials acting within the scope of their authority are empowered to execute agreement amendments, modifications or annexes.

b. If the original or underlying agreement has already been entered into the OAR Tracking System, the amendment, modification or annex process follows a similar track of review and clearance as that for new agreements described in Part 4. REVIEW AND CLEARANCE PROCEDURES.



## Section C. General Requirements for Requesting Waivers

C.01. **Processing Waivers of Advance Funding/Payment.** Advances are considered the primary method of payment for reimbursable agreements. Advances are identified as one-year funds (Appropriation A) or multi-year funds (Appropriation B). Listed below are the types of appropriations used for reimbursable agreements.

a. **Appropriation A, Federal Advances from Single Year Appropriations.** A fund established to receive payment in advance for the cost of services performed for another Federal agency where the funds are made available for a single year.

b. **Appropriation B, Non-Federal and Other Federal Advances.** A fund established to receive payment in advance for the cost of services performed for another Federal agency where the funds are made available until expended.

c. **Appropriation R.** Tasks will be reimbursed for the cost of services performed for the requesting Party. There are three billing methods for an Appropriation R task: monthly, quarterly, or at completion.

d. **Billing Basis.** The billing basis will be indicated according to the following definitions.

### Billing Basis:

- (1) Actual Costs - NOAA will bill the sponsor for the actual cost incurred in performing the job.
- (2) Fixed Price - NOAA will receive a firm fixed price in return for performing the work specified in the agreement.

### Cycle:

- (1) Advance - The sponsor has made or will make payments prior to initiation of the reimbursable work.
- (2) Monthly - NOAA will submit monthly bills to the sponsor throughout the reimbursable work period.
- (3) Quarterly- NOAA will bill the sponsor on a quarterly basis during the work period.
- (4) At Completion - The bill for the reimbursable work will be submitted to the sponsor following completion of the work specified in the agreement.

The authorizing statute for some Federal programs requires agencies to obtain advance funding for projects. If not required by statute, funding from Federal entities may be provided in advance of the work to be conducted or reimbursed as work is completed (e.g., Special Studies, Intergovernmental Cooperation Act Agreements, Joint Project Agreements). If required by statute, the agreement must include a provision for advance funding. If not required by statute, agreements with OAR to conduct work for non-Federal organizations must include advance

payment provisions, unless a waiver has been obtained. However, if the total estimated cost of the project will exceed \$50,000 or the length of time to complete the work will exceed 6 months, an advance payment schedule may be established within the Agreement. ***[See Chapter 2, Section 03, NOAA Budget Handbook for details on advance payments, including exceptions to the requirements for OAR.]*** The NOAA Budget Handbook, Chapter 2, provides guidance on waiving advance payments for both Federal and non-Federal sponsored work. Although advance payment is the preferred method of payment, the head of the Program Office responsible for performing the reimbursable work may determine, on a case-by-case basis, that an advance payment is not feasible. Work performed for non-Federal sponsors which requires advance payment requires the head of the Program Office responsible for performing the reimbursable work to justify the action and request in writing, a waiver of the advance payment policy from the NOAA, Chief Financial Officer/Chief Administrative Officer, before accepting the reimbursable work. ***[Sample Waiver Request formats are provided in Appendix N of the NOAA Budget Handbook.]***

**C.02. Processing Waivers of Certain Elements of Distributed Costs.** The NOAA Reimbursable Task Plan Budget Handbook, Chapter 2, also provides guidance on requesting waivers of any costs associated with reimbursable work. No waivers of any elements of distributed costs will be made without the prior approval of the Director, Budget Office except as otherwise provided in Section 03.2.e. Waivers, of the Budget Handbook. The agreement should include the total estimated costs, and a budget breakout of total estimated project costs including direct labor, and the appropriate overhead rate as determined by the OFA, NOAA and stipulate any fiscal year restrictions the receiving agency may have on 1 year funds under the payment portions of the reimbursable agreement. This requirement may be waived by the Approving Official. If this requirement is waived, the official agreement file must contain a suitable justification and explanation of the reason why the agreement should not specify the total estimated costs. ***[See NOAA Reimbursable Task Plan Budget Handbook, Chapter 2, Section 03 on requesting waivers of any costs associated with reimbursable work.]*** Distributed costs are defined in the Budget Handbook as direct and indirect costs of NOAA programs and tasks which are generated by the application of rates and include such items as NOAA overhead, depreciation, and GSA rent.

Costs eligible for waiver include: (1) Those distributed cost that make up NOAA Support (i.e., own and other General Support, Executive Direction and Central Administrative Support (EXAD), and Common Services). Requests for Common Services waivers for work in non-NOAA sites must be limited to 60 percent of any Common Services rate in effect. (2) Depreciation distributed directly to a Reimbursable Task will only be waived when the equipment used for that particular Task is provided by the reimbursing party or sponsor. Standard Level User Charges (SLUC) or GSA rent will normally be waived only if the services are performed in facilities not provided by NOAA. ***[Remember, no waiver will be approved for direct or indirect costs for Economy Act Agreements. All Economy Act Agreements must include full cost recovery.]***

Waiver requests must be fully justified in writing before negotiating the agreement and include the amount requested to be waived. Before requesting a waiver, the Task Manager must inform any participating Financial Management Center (FMC) and obtain their agreement. An approved waiver is applicable to the entire Task including all participating FMCs, insofar as billings and earnings are concerned. Each waiver request must also include a direct task number to which the waived costs will be charged, unless the amount is for GSA rent. A

single direct Task number must be agreed upon by the primary FMC, the Execution and Operations Division (OFA33), and the Finance Office (OFA2) for assignment of waived costs as each FMC must use its direct appropriations to fund approved waivers.

Requests for waivers of NOAA support, directly charged depreciation and GSA rent should be directed according to the following distribution for review and approval.

- a. Waivers should be addressed to the Director, Budget Office (OFA3) and sent to the OFA Budget Office, Budget Execution and Operations Division (OFA33), Division Chief, for review and transmission.
- b. OFA33 will prepare a decision memorandum and submit to OFA3 for review and approval.
- c. An approved or disapproved waiver is returned to OFA33 for distribution to the Line Office and Finance Office. If disapproved, the package is returned to the LO, FMC or Laboratory management and Budget Office for renegotiation with the sponsor. If approved, the Budget Office notifies the LO which will then notify the Task Manager. The Task Manager will then draw up the proposed agreement with the sponsor. *[Sample Waiver Request formats are provided in Appendix N of the NOAA Budget Handbook. ]*

**C.03. Processing Waivers of Joint Project Agreement Costs.** Department Organization Order (DOO) 10-5 prescribes the authority and functions of the CFO and Assistant Secretary for Administration (ASA). That order delegates to the CFO and ASA the responsibilities of the Secretary of Commerce regarding special studies, reports, technical information, and other related functions under 15 USC §§ 1525-1527. This includes approval of waivers of costs under JPA authorized under 15 USC § 1525 (second paragraph). That authority has been redelegated to the Heads of operating units within the DOC.

Payment by non-Federal Partners of its share of the joint project costs could be waived under special conditions set forth in Section 6.07 of the DOC Accounting Principles and Standards Handbook. In addition, payments could also be waived when it is determined that the Partner organization is financially unable to pay its full apportioned costs and determined the appropriate portion of the project's costs to be waived. The Assistant Administrator (AA), or designee, acting with the advice of the Director OMI, will prepare a justification and determine the appropriate portion of the project's costs to be waived. A waiver of the cost must be obtained before signing the JPA and before beginning the work on the project.

**C.04. Processing Waivers of Certain Requirements of the OAR User Manual and the DOC Interagency and Other Special Agreement Handbook.** Any request for waivers and/or deviations from the requirements of this Manual and the DOC Handbook on Interagency and Other Special Agreements must be submitted in writing to the Assistant Administrator (AA), OAR, through the Director OMI, by OAR Program/ Staff Office and Laboratory Directors. The waiver or deviation request must include a full explanation for the request and justification for the deviation or waiver. Any adverse dollar impact should be

quantified and the programmatic impact to any OAR program should be briefly explained in the supporting documentation. The Director OMI will review the request, coordinate with appropriate DOC-OGC and OEAM officials, and provide a response to the requesting OAR Program/Staff Office. Requests for waivers and deviations from the requirements of the User Manual and DOC Handbook will be approved only in extraordinary circumstances and when such approval would be in the best interest of the Federal Government. The final approval authority for this type of waiver resides with OEAM.

#### **SECTION D. Unauthorized Agreements**

It is OAR's policy to carefully review all unauthorized agreements entered into by OAR's Program/ Staff Office/ Laboratory personnel. An unauthorized agreement is an arrangement or relationship that is signed by an unauthorized OAR employee, or one is signed by an authorized employee without benefit of OAR management and General Counsel clearance-review as documented in this manual. Once it has been established that an unauthorized agreement has been entered into, that agreement will be immediately suspended, unless it is shown that severe harm will come to the program or project involved. A review of the unauthorized agreement will be undertaken to establish if the agreement is proper and should be approved or terminated. If it is determined that the agreement is proper, then it needs to be "ratified." To ratify the agreement, the individual who entered into the unauthorized agreement shall prepare an official statement or memorandum for the cognizant Program Office/Staff Office/ Laboratory Director explaining the circumstances why the review and clearance procedures were not followed and the OAR Program Office /Staff Office/ Laboratory Director shall request OAR Headquarters and General Counsel review of the statement before endorsing ratification or formal suspension of the unauthorized project. A memorandum to the Director of the Office of Management and Information (OMI), from the Program, Staff Office, or Laboratory Director shall explain what action(s) have been taken to preclude similar actions in the future and transmit copies of the statement, the Office of General Counsel review comments, and the proposed ratification agreement or suspension as appropriate. OAR expects such unauthorized actions to be rare occurrences.

## APPENDIX A - ADDITIONAL LAWS AND GUIDANCE TO CONSIDER WHEN NEGOTIATING AGREEMENTS

In addition to the statutes and regulations that authorize or specifically regulate particular types of agreements, other Federal Government statutes and regulations may affect the terms of an agreement. Below is a list and brief description of laws which should be considered when negotiating and writing a special agreement with an outside party.

### Additional Statutes or Laws

**Antideficiency Act, 31 U.S.C. § 1341-1342.** The Antideficiency Act prohibits Federal officials from: (1) making or authorizing an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or (2) involving the Government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. Usually this law is violated when agencies agree to indemnify another party against all losses or damages. If you are negotiating an agreement, and the subject of indemnification is raised, contact the Office of the Assistant General Counsel for Administration, General Law Division. The law also prohibits accepting voluntary services, unless specifically authorized by law or in true emergency situations.<sup>6</sup>

**Bona Fide Needs Rule, 31 U.S.C. § 1502(a).** The bona fide needs rule provides that an appropriation which is limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period. Thus, for example, if you are using 1-year monies, you can only use those monies to fulfill bona fide needs for goods, services, or activities during that year. In other words, one generally cannot use last year's money for this year's expenses, or *vice versa*, unless you have no-year appropriations of other authority.

**Purpose Statute, 31 U.S.C. § 1301(a).** The Purpose statute provides that appropriations shall be applied only to the purpose for which the appropriations were made, except as otherwise provided by law. The statute thus restricts an agency from using its funds for expenditures that are not authorized by law (*e.g.*, personal expenses of employees like food and beverages). Agreements must not make commitments for activities or purchases that are not authorized. ***[NOTE: Before funds are spent, the initiating OAR office must make sure that either: (1) there is express statutory authority for this particular expenditure, or (2) the expenditure is a necessary expense in furtherance of an authorized activity. A three-part test determines whether an expenditure is a necessary expense. The expense must (a) be reasonably necessary in carrying out an authorized function; (b) contribute materially to the effective accomplishment of that function; and (c) not be otherwise authorized by law. Violations of the Purpose Statute could lead to a violation of the Antideficiency Act, if the proper funds are not available to cover the expenditure.]***

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<sup>6</sup> If this Act is violated, the law requires the agency to determine which individual official is responsible for this violation. The violation then must be reported personally by the Secretary to the President and Congress, specifically naming the individual responsible. Administrative discipline is required, and any willful violations of the Act are subject to criminal prosecution, with a fine up to \$5,000, two years imprisonment, or both.

**Freedom of Information Act (FOIA), 5 U.S.C. § 552.** The FOIA generally provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of the nine specific FOIA exemptions. The DOC regulations implementing the FOIA are found at 15 CFR Part 4, Public Information, which sets forth rules for DOC and operating units to make requested materials, information, and records publicly available. For NOAA Line offices additional implementing guidance is found in the NOAA FOIA home page at <http://www.rdc.noaa.gov/~foia/>.

Agreements should never contain a provision that information will be protected or withheld. If the parties want a provision regarding protecting information, the following statement only should be used: ***The information will be protected from disclosure to the extent provided by Federal law.*** For advice concerning FOIA, contact OAR's FOIA Officer.

**Paperwork Reduction Act (PRA), 44 U.S.C. 3501.** The PRA and its implementing regulations at 5 CFR 1320, Controlling Paperwork Burdens on the Public, requires an agency to obtain approval from OMB before conducting or sponsoring a collection of information from 10 or more persons, including companies.

A collection of information includes identical questions posed to 10 or more persons, written, either electronically, or verbally, and must be cleared by the DOC Chief Information Officer or staff and through OMB (the clearance process can take 90 to 120 days). For additional advice concerning the PRA, contact DOC's Paperwork Reduction Act Officer, or, for legal advice, contact the Office of the Assistant General Counsel for Administration, General Law Division.

**Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.** The FACA governs the organization and operations of any committee, board, commission, council, conference, panel, task force or other similar group which is established by statute or established or utilized by an agency for the purpose of obtaining advice or recommendations on issues or policies within the scope of an agency official responsibilities. Under this broad definition, any group that meets for the purpose of developing consensus advice for the Government is subject to the FACA and its requirements, subject to exceptions set forth at 41 CFR 102-3.40.

The FACA requires that all committees be chartered, that meetings be announced in the Federal Register at least 15 days in advance, that the public be permitted to attend, and that detailed minutes be kept which shall later be kept on file and available to the public. However, there are ways to interact with the public so as not to trigger the FACA and its requirements. For additional advice concerning FACA, contact the Office of the Assistant General Counsel for Administration, General Law Division.

**Case-Zablocki Act, 1 U.S.C. § 112b.** The Case-Zablocki Act and DAO 218-4, Treaties and Other International Agreements, govern International Agreements. An International Agreement is a descriptive term that refers to an agreement where at least one Party is a foreign government or an organization outside the U.S. and its territories.

Many International Agreements are subject to the Case-Zablocki Act, 1 U.S.C. § 112b, and,

therefore, operating units must follow procedures in DAO 218-4 before International Agreements are negotiated. However, not all agreements fall within the ambit of the Act. Any department or agency of the U.S. Government that enters into any International Agreement subject to the Case-Zablocki Act must transmit to the Department of State the text of the Agreement not later than twenty (20) days after such Agreement has been signed. The Secretary of State shall transmit to the Congress the text of any International Agreement subject to the Act (including the text of any oral International Agreement, which Agreement shall be reduced to writing), other than a treaty, to which the U.S. is a party as soon as practicable after such Agreement has entered into force with respect to the U.S. but in no event later than 60 days thereafter. For advice concerning the Case-Zablocki Act and DAO 218-4, contact *the (GCIL) staff attorney*.

**Lobbying Prohibition, 18 U.S.C. § 1913.** Title 18 U.S.C. § 1913 and provisions in the Department's annual Appropriations Act prohibit the Department from using appropriated funds for activities designed to influence members of the public to contact Congress regarding any pending legislation or appropriation. These provisions, however, do not prohibit Government officials from directly communicating with Members of Congress regarding pending legislation. Agreements should not have as an element any grass-roots lobbying efforts. For advice concerning the restrictions against lobbying, contact the Office of the Assistant General Counsel for Administration, General Law Division.

### **OMB Circulars and Other Regulatory Guidance**

The following OMB Circulars and others should be considered when negotiating agreements.

**OMB Circular A-25, User Charges.** This Circular applies to agreements that provide a special benefit beyond those received by the general public.<sup>7</sup> The Circular requires that the charges for the services must be sufficient to recover the full cost to the Federal Government. It requires that user charges . . . be collected in advance of, or simultaneously with, the rendering of services unless there are specific appropriations and authority to pay afterwards. Limited exceptions to the requirement of full cost recovery are set forth in the Circular and in Chapter 12.07 of the DOC Accounting Principles and Standards Handbook. Agreements that invoke general user charge statutes (e.g., Government Wide User Fee Authority, 31 U.S.C. § 9701) are subject to A-25. NOAA can apply to OMB for an exemption to A-25 requirements of advance or simultaneous payment. *[See Section 6(c) of the Circular]*

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<sup>7</sup> OMB Circular A-25 defines special benefits as follows. When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:

(a) enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or

(b) provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or

(c) is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Customs inspection after regular duty hours).

**OMB Circular A-76, Performance of Commercial Activities.** This Circular prohibits the Government from starting or continuing activities to provide a commercial product or service if the product or service can be procured more economically from a commercial source. Unless the transaction lies within certain exceptions specified at Part I, Chapter 1, Section C of the Supplement to OMB Circular A-76, an agency that wants to procure goods or services from another Federal agency must prepare an analysis of its requirements to determine that use of another agency's resources is necessary.<sup>8</sup> For advice concerning the OMB Circular A-76, contact *[state title of official who has been assigned the responsibilities as the NOAA OMB Circular A-76 coordinator]*.

**OMB Circular A-123, Management Accountability and Control.** This Circular provides guidance to Federal managers on improving accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on management controls. The Circular is issued under the authority of the Federal Managers' Financial Integrity Act of 1982, as codified in 31 U.S.C. § 3512. Management controls are the organization, policies, and procedures used to reasonably ensure that (1) programs achieve their intended results; (2) resources are used consistent with agency missions; (3) programs and resources are protected from waste, fraud, and mismanagement; (4) laws and regulations are followed; and (5) reliable and timely information is obtained, maintained, reported and used for decision making.

**DAO 203-9 Gifts and Bequests.** DAO 203-9 sets forth the policies and procedures for the acceptance and use of gifts by the Department. Generally, the Secretary can accept and use gifts to aid or facilitate the work of DOC. Although the manner of acceptance of gifts may require negotiation (and, therefore, may result in an agreement over the conditions of acceptance), gifts are not a product of bargaining and cannot be accepted if the donor expects services or favors in return. Gifts are not considered a type of Special Agreement, but they are another legal mechanism with which to work with outside parties. For advice concerning the DAO 203-9, contact the Office of the Assistant General Counsel, Ethics Division.

**Conflicts of Interest.** It is the policy of the DOC to rigorously avoid conflicts of interest in connection with agreements. A conflict of interest exists when a person participates in a matter which is likely to have a direct and predictable effect on his or her financial interests. A conflict also exists where there is an appearance that a person's objectivity in performing his or her responsibilities is impaired. An organizational conflict exists where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice to the Government. Conflicts of interest should be avoided, but if they are discovered, they should promptly be resolved through disqualification, divestiture, waiver or other appropriate measures.

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<sup>8</sup> The Economy Act, 31 U.S.C. § 1535 authorizes agencies to enter into mutual agreements to obtain goods or services by interagency acquisition. However, in accordance with FAR 48 U.S.C. 17.502(c), Economy Act transactions are not exempt from the requirements of FAR, 48 CFR 7.3, Contractor versus Government Performance, which implements OMB Circular A-76.



## **APPENDIX B - REFERENCES**

A list of documents relating to interagency and other special agreements includes, but is not limited to, the following:

**Federal Acquisition Regulation, 48 CFR 17.500**

**OMB Circular No. A-25, "User Charges,"**

**OMB Circular A-76, "Performance of Commercial Activities,"**

**OMB Circular A-123, Management Accountability and Control,**

**Department Administrative Order 218-4, "Treaties and Other International Agreements,"**

**Department Administrative Order 203-26, "Department of Commerce Grant Administration,"**

**Department Organization Order 10-5, "Chief Financial Officer and Assistant Secretary for Administration,"**

**Department of Commerce Accounting Principles and Standards Handbook,**

**Draft Department of Commerce Interagency and Other Special Agreements Handbook,**

**NOAA Budget Handbook, Chapter 2, Section 03, Reimbursable Task Planning (RTP),**

**NOAA Finance Handbook,**

**NOAA Administrative Order 210-103, "Cooperative Research and Development and Invention Licensing Agreements Under the Federal Technology Transfer Act of 1986,**

## APPENDIX C - DEFINITIONS

**Advance Payment.** An advance is considered the primary method of payment for reimbursable agreements. Advances are identified as one-year funds (Appropriation A) or multi-year funds (Appropriation B).

**Appropriations.** An appropriation provides budget authority for the purpose(s) stated in the law. However, budget authority is not money; it is the authority to incur a legal obligation to pay a sum of money from the U.S. Treasury. Several terms with respect to type of funds may be used in connection with agreements, and some of these terms are discussed below.

**Augmentation.** An augmentation supplements funds of a Federal agency from an outside source (other than through a direct appropriation from Congress). Augmentations are not legal unless authorized by a specific statute. Examples of such statutes are the Economy Act (31 USC § 1535), DOC's Joint Project Authority (15 USC § 1525), and certain other legal authorities that allow DOC to accept User Charges. *[NOTE: Regardless of whether the augmentation is proper, if cash is received by the Department, the Miscellaneous Receipts Statute, 31 USC § 3302 (b), requires that it be deposited in the Treasury "as soon as practicable without deduction for any charge or claim."]*

**Checklists.** Checklists can be effective tools in assuring that required actions in specific areas have been completed and in the review and analysis of agreements. Sample checklists are provided as Exhibits at the end of each Section of Part 3., "Unique Requirements Special Agreements," for your information and use, as deemed appropriate.

**Contract.** A procurement contract is the legal instrument reflecting a relationship between DOC and another entity when: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government, or (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract. A contract may also refer to the legal instrument reflecting a relationship between a recipient and contractor or between such contractor and subcontractor. One exception to this rule is when the Department purchases goods or services from another Federal agency; this may be done under the authority of the Economy Act, 31 USC § 1535, provided certain circumstances are met.

**Cooperative Research and Development Agreement (CRADA).** A CRADA is a type of agreement, subject to specified conditions, that permits DOC laboratories to enter into cooperative research and development agreements with other Federal agencies, State and local governments, industrial organizations, industrial development organizations, public and private foundations, non-profit organizations, institutions of higher education, and other persons and to negotiate patent licensing agreements.

**Federal Acquisition Regulation (FAR).** The FAR is the Government-wide regulation which provides guidance with respect to Federal procurement contracts.

**Financial Assistance.** Financial Assistance (grant, cooperative agreement, loan, or loan guarantee) is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation which is authorized by Federal statute.

**In-Kind Contributions.** An in-kind contribution or amount is a contribution other than a monetary contribution, e.g., services or property. All such contributions must be included in the budget supporting the project in order for all costs to be recognized. In-kind contributions may be accepted as part of a partner's cost when it meets the following criteria: (1) is verifiable from the partner's records; (2) is not included as contributions for any other Federally-assisted project or program; (3) is necessary and reasonable for proper and efficient accomplishment of the objectives of the agreement; (4) is not paid by the Federal Government under another award or agreement, except where authorized by Federal statute to be used for cost sharing or matching; and (5) is provided for in the approved budget.

**Interagency Agreement.** A written document containing specific provisions of governing authorities, responsibilities, and funding entered into between the DOC and a reimbursing sponsor or between another organization and the DOC where DOC is the sponsor. Such an agreement must be in existence prior to initiation of reimbursable work by the DOC and must cite the applicable legal authorities for entering into the agreement, whether the funding is coming into DOC or going out.

**International Agreements.** An International Agreement is a descriptive term that refers to an Agreement where at least one Party is a foreign government or an organization outside the U.S. and its territories. The term does not refer to a category of agreement or to an authority for entering into agreements. Many International Agreements are subject to the Case-Zablocki Act, 1 USC § 112b, and, therefore, operating units must follow procedures in DAO 218-4 before International Agreements are executed. Any department or agency of the U.S. Government that enters into any International Agreement on behalf of the U.S. shall transmit to the Department of State the text of the agreement not later than 20 days after such agreement has been signed. The Secretary of State shall transmit to the Congress the text of any International Agreement (including the text of any oral International Agreement, which Agreement shall be reduced to writing), other than a treaty, to which the U.S. is a Party as soon as practicable after such Agreement has entered into force with respect to the U.S. but in no event later than 60 days thereafter.

**Justifications.** Written justifications, if applicable, document that sufficient consideration has been given to the criteria that must be met for each Agreement. When justifications are required, the basis for the justification must also be provided. Any justification must be signed by an appropriate official. A copy of the written justification, the basis for the justification, and any clearances for the justification must be maintained in the agreement file.

**Memorandum of Understanding/Agreement (MOU/A).** MOU/A is a generic term that simply refers to an arrangement with the DOC that is not a contract, a grant, or a cooperative agreement, and the term has no reference to any particular procurement statutory authority. This is a term that is synonymous or interchangeable with the word agreement in general. There is no legal significance between the terms Memorandum of Understanding and Memorandum of Agreement. An MOU/A is a non-specific description that is commonly used to refer in general to any one of the agreements that are covered by this User Manual.

**Multiple Award Schedule Contracts.** A Multiple Award Schedule Contract is a type or procurement contract and is, therefore, not a type of agreement covered by this Handbook.

However, it should be noted that when DOC is the requesting agency under this type of procurement contract, it is good business practice to conduct a price analysis between different schedule providers to assure that DOC receives the best value in making the acquisition, to include consideration of administrative costs.

**Operating Unit.** A primary organizational unit of the DOC.

**Operating Unit Special Agreements.** An Operating Unit Special Agreement is a type of agreement for which the operating unit has specific authority and funds may be committed under these agreements. The work to be performed under an Operating Unit Special Agreement is usually related to the mission of the operating unit. *[NOTE: The individual operating unit s finance offices determine overhead rates for their organizational units based on cost experience from prior years. These rates are updated periodically and provided to OEAM by the operating unit s finance offices.]*

**Overhead Rate.** Overhead represents indirect costs or expenses of an agency which cannot be charged as belonging exclusively to any particular part of the project or service being performed by DOC personnel (rent, electricity, administrative support, general office expenses, depreciation, etc.). These rates must be used and applied to labor costs when developing budgets for reimbursable work in order to recover the total costs of tasks DOC undertakes for other organizations. The individual operating unit s finance offices determine overhead rates for their organizational units based on cost experience from prior years.

**Payments.** Payments shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996. Generally, no payment shall be made to a party to the agreement until the work stipulated in the agreement has been completed. However, a waiver may be obtained from the Approving Official for the release of advance payments if so stated in the agreement. A copy of the written justification for the waiver must be maintained in the official agreement file. The Approving Official is responsible for approving advance payments.

**Price Analysis.** When DOC is the requesting agency using an agreement for interagency acquisitions (i.e., Economy Act Agreements), it is good business practice to include in the Official Agreement File a documented price analysis which contains the following information:(1) specifications for the items/services to be obtained so that the requirement is clearly defined; (2) a delivery/performance schedule that is achievable, ensuring that the servicing agency is aware of the schedule; and (3) price analysis among different providers in order to receive the best value.

**Reimbursable Agreement.** A reimbursable agreement is a type of agreement under which payments are made on a cost-reimbursable basis; therefore, the reimbursable agreement must have a statutory authority to commit funds.

**User Fees.** Fees charged by DOC when it conveys special benefits to individuals or organizations beyond those occurring to the general public.

**STATUTES THAT AUTHORIZE NOAA/OAR TO ENTER INTO AGREEMENTS AND/OR TO TRANSFER/ACCEPT FUNDS**

<b>Legal Authority</b>	<b>Description/Criteria</b>
Duties of Secretary of Commerce/Weather Service Organic Act 15 U.S.C. § 313 et seq.	Authorizes Weather and Meteorological Reporting/ Forecasting Responsibilities Assigned to the Secretary.
DOC Special Studies Authority, (15 U.S.C. § 1525 [first paragraph])	Authorizes the Secretary, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of DOC; prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this Title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.
DOC Joint Project Authority, (15 U.S.C. § 1525 [second paragraph])	<p>Authorizes the Secretary to engage in joint projects with nonprofit organizations, research organizations, or public organizations or agencies (including Federal agencies), or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably.</p> <p>Joint projects may be performed only if (a) the project cannot be done at all or as effectively without the participation of all the parties to the project and (b) the project is essential to the furtherance of a departmental program.</p>
15 U.S.C. § 1540	<p>Authorizes the Secretary to enter into cooperative agreements and other financial arrangements with any nonprofit organization to aid and promote scientific and educational activities to foster public understanding of NOAA or its programs.</p> <p>Authorizes the Secretary to solicit private donations for the support of such activities.</p>
National Climate Program Act (15 U.S.C. § 2901).	Authorizes grants authority to enter Cooperative Agreements to Study Climate Change.
Global Change Research Act (15 U.S.C. § 2921).	Authorizes research activities aimed at understanding climate variability and its predictability.

Legal Authority	Description/Criteria
<p><b>Duties of Secretary of Commerce/Weather Service Organic</b> Act 15 U.S.C. § 313 et seq.</p>	<p><b>Authorizes Weather and Meteorological Reporting/ Forecasting Responsibilities Assigned to the Secretary.</b></p>
<p><b>DOC Special Studies Authority ,</b> (15 U.S.C. § 1525 [first paragraph])</p>	<p><b>Authorizes the Secretary, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of DOC; prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this Title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.</b></p>
<p><b>DOC Joint Project Authority ,</b> (15 U.S.C. § 1525 [second paragraph])</p>	<p><b>Authorizes the Secretary to engage in joint projects with nonprofit organizations, research organizations, or public organizations or agencies (including Federal agencies), or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably.</b></p> <p><b>Joint projects may be performed only if (a) the project cannot be done at all or as effectively without the participation of all the parties to the project and (b) the project is essential to the furtherance of a departmental program.</b></p>
<p><b>15 U.S.C. § 1540</b></p>	<p><b>Authorizes the Secretary to enter into cooperative agreements and other financial arrangements with any nonprofit organization to aid and promote scientific and educational activities to foster public understanding of NOAA or its programs.</b></p> <p><b>Authorizes the Secretary to solicit private donations for the support of such activities.</b></p>
<p><b>National Climate Program Act</b> (15 U.S.C. § 2901).</p>	<p><b>Authorizes grants authority to enter Cooperative Agreements to Study Climate Change.</b></p>
<p><b>Global Change Research Act</b> (15 U.S.C. § 2921).</p>	<p><b>Authorizes research activities aimed at understanding climate variability and its predictability.</b></p>
<p><b>Federal Technology Transfer Act,</b> (15 USC § 3710a)</p>	<p><b>Authorizes a NOAA-operated laboratory to enter into cooperative research and development agreements with other Federal agencies; units of State or local government; industrial organizations; public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency, wherein the laboratory may accept, retain, and use funds, personnel, services, and property from a collaborating party, and provide personnel, services and property but not funds to the collaborative effort.</b></p> <p><b>A NOAA laboratory may grant in advance, licensee or assignments and also in advance waive Federal Government ownership to any inventions made by employees of the collaborating organizations.</b></p> <p><b>Special consideration shall be given to small businesses and to businesses that agree to manufacture any products in the U.S. Agency program missions shall be advanced.</b></p>

<p><b>Economy Act of 1932, (31 U.S.C. § 1535)</b></p>	<p>Authorizes the head of an executive agency or major organizational unit within the Federal Government to place an order with a major organizational unit within the same agency or another Federal agency for goods or services if:</p> <ul style="list-style-type: none"> <li>(1) sufficient funds are available;</li> <li>(2) the head of the ordering agency decides the order is in the best interest of the Government;</li> <li>(3) the agency filling the order is able to provide the goods or services; and</li> <li>(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or economically by a commercial enterprise.</li> </ul> <p>No other specific authority exists for the acquisition.</p>
<p><b>Intergovernmental Cooperation Act, (31 U.S.C. § 6505)</b></p>	<p>Authorizes NOAA to provide specialized or technical services for State or local governments that the agency is especially competent and authorized by law to provide.</p> <p>The services must be consistent with and further the Government's policy of relying upon the private enterprise system to provide services reasonably and quickly available through ordinary business channels.</p> <p>Services may be provided only when there is a written request for those services made by the state or local government. The requestor must also pay all identifiable costs incurred by the agency in rendering the service.</p>
<p><b>Government-Wide User Fee Authority, (31 USC § 9701) and OMB Circular A-25</b></p>	<p>Authorizes agencies to impose a fee for any activity that conveys special benefits to its recipient(s) beyond those accruing to the general public. Each charge/fee shall be fair, and based on:</p> <ul style="list-style-type: none"> <li>(a) the costs to the Government;</li> <li>(b) the value of the service to the recipient;</li> <li>(c) public policy or interest served;</li> <li>(d) other relevant facts.</li> </ul> <p>Fees/charges collected must be sent to the U.S. Treasury.</p>
<p><b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883e)</b></p>	<p>Authorizes the Secretary to enter into cooperative agreements with, and to receive and expend funds made available by any State, or subdivision thereof, any Federal agency, or any public or private organization, or individual for surveys and investigations authorized under 883a et seq., or for performing related surveying and mapping activities, including special purpose maps and for the preparation and publication of the results thereof.</p> <p>Authorizes the Secretary to establish the terms of any cooperative agreement entered into under this section, including the amount of funds to be received, and may contribute that portion of the cost incurred by NOAA, including ship time and personnel expenses, which the Secretary determines represents the amount of benefits derived by the Administration from the cooperative agreement.</p>
<p><b>Hydrographic Services Act, (33 U.S.C. § 892et seq)</b></p>	<p>Authorizes the Administrator of NOAA to enter into contracts and other agreements with qualified entities, consistent with subsection (a)(8) of this section, for the acquisition of hydrographic data and the provision of hydrographic services.</p>

## APPENDIX E

### KEY NOAA/OAR PROGRAMMATIC AUTHORITIES AND REFERENCES

Programmatic Authority	Activities Authorized
<b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883a)</b>	<p>To provide charts and related information for the safe navigation of marine and air commerce, and to provide basic data for engineering and scientific purposes and for other commercial and industrial needs, the Secretary is authorized to conduct the following activities:</p> <ul style="list-style-type: none"> <li>(1) hydrographic and topographic surveys;</li> <li>(2) tide and current observations;</li> <li>(3) geodetic-control surveys;</li> <li>(4) Field surveys for aeronautical charts; and</li> <li>(5) Geomagnetic, seismological, gravity, and related geophysical measurements and investigations, and observations for the determination of variation in latitude and longitude.</li> </ul>
<b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883b)</b>	<p>In order that full public benefit may be derived from the operations of OAR by the dissemination of data resulting from activities herein authorized and of related data from other sources, the Secretary is authorized to conduct the following activities:</p> <ul style="list-style-type: none"> <li>(1) analysis and prediction of tide and current data;</li> <li>(2) processing and publication of data, information, compilations, and reports;</li> <li>(3) compilation and printing of aeronautical charts of the U.S., its Territories, and possessions; and the compilation and printing of such aeronautical charts covering international airways as are required primarily by U.S. civil aviation;</li> <li>(4) compilation and printing of nautical charts of the U.S., its Territories, and possessions;</li> <li>(5) distribution of aeronautical charts and related navigational publications required by U.S. civil aviation; and</li> <li>(6) distribution of nautical charts and related navigational publications for the U.S., its Territories, and possessions.</li> </ul>
<b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883c)</b>	<p>Authorizes the Secretary to collect, correlate, and disseminate geomagnetic data from domestic and foreign sources, and to assure that such data shall be readily available to Government and private agencies and individuals, NOAA is designated as the central depository of the U.S. Government for geomagnetic data.</p>
<b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883d)</b>	<p>Authorizes the Secretary to conduct developmental work for the improvement of surveying and cartographic methods, instruments, and equipments; and to conduct investigations and research in geophysical sciences(including geodesy, oceanography, seismology, and geomagnetism)</p>
<b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883e)</b>	<p>Authorizes entry into cooperative agreements with, and to receive/expend funds made available by State/Federal agency, as well any public or private organization or individual for purposes of surveying or mapping activities, including special purpose maps.</p>



<b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883f)</b>	<b>Authorizes the Secretary to contact with qualified organizations for the performance of any part of the authorized functions of the Coast and Geodetic Survey Act when he deems such procedure to be in the public interest.</b>
<b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883h)</b>	<b>Authorizes the Secretary to cause to be employed public vessels as he deems it expedient to employ and to give such instructions for regulating their conduct as he deems proper in order to carry out the provisions of this subchapter.</b>
<b>Coast and Geodetic Survey Act of 1947, (33 U.S.C. § 883i)</b>	<b>Authorizes the appropriation of funds as may be necessary to acquire, construct, maintain, and operate ships, stations, equipment, and facilities, and for such other expenditures, including personal services at the seat of the Government and elsewhere, including the erection of temporary observatory buildings and lease of sites therefor, as may be necessary for the conduct of the activities herein authorized.</b>
<b>Duties of Secretary of Commerce Weather Service Organic Act 15 U.S.C. § 313 et seq.</b>	<b>Authorizes Weather and Meteorological Reporting/ Forecasting Responsibilities Assigned to the Secretary.</b>
<b>National Climate Program Act (15 U.S.C. § 2901).</b>	<b>Authorizes grants authority to enter Cooperative Agreements to Study Climate Change.</b>
<b>Global Change Research Act (15 U.S.C. § 2921).</b>	<b>Authorizes research activities aimed at understanding climate variability and its predictability.</b>
<b>Sea Grant Colleges &amp; Marine Science Development (33 U.S.C. §§ 1121, 1124, and 1131)</b>	<b>Authorizes the Secretary to make grants and enter into contracts to assist the Sea Grant Program and projects.</b>
<b>33 U.S.C. § 1268</b>	<b>Authorizes Great Lakes Environmental Research Laboratory</b>
<b>National Acid precipitation Program Act. (42 U.S.C. § 8901 et seq.)</b>	<b>Authorizes establishment of a comprehensive ten-year program to carry out research activities involving acid precipitation resulting from other than natural sources and authorizes the implementation of the National Acid Precipitation Program under the formation of the Acid Precipitation Task Force; also authorizes the NOAA Administrator to serve as the director of the research program.</b>

## APPENDIX F

### ANCILLARY STATUTES THAT AUTHORIZE NOAA TO ENTER INTO AGREEMENTS, TRANSFER/ACCEPT FUNDS AND/OR TO ENGAGE IN SPECIFIC TYPES OF ACTIVITIES

Legal Citation	Description/Criteria
Sea Grant Colleges & Marine Science Development (33 U.S.C. §§ 1121 et seq.)	Authorizes the Secretary to increase the understanding, assessment, development, utilization, and conservation of the Nation's ocean, coastal, and Great Lakes resources by providing assistance to promote a strong educational base, responsive research and training activities, broad and prompt dissemination of knowledge and techniques, and multi disciplinary approaches to environmental programs.
Clean Water Act (33 U.S.C. §§ 1251 et seq.) and its interpretive regulations - The National Contingency Plan	<p>In cooperation with EPA and other Federal agencies, authorizes NOAA to conduct research, investigations, etc., relating to causes, effects, prevention, reduction, etc. of pollution. (Sec. 1254(a) &amp;(b))</p> <p>Authorizes EPA in conjunction with NOAA(among other agencies ) to conduct research on bioaccumulation of pollutants in aquatic species. (Sec. 1254(a))</p> <p>Authorizes EPA, in cooperation with other Federal agencies, (including NOAA ), to conduct or fund projects to demonstrate approaches to the control or elimination of water pollution from mines. (Sec. 1257(a))</p> <p>Authorizes EPA in cooperation with other Federal agencies (including NOAA ), to enter into agreements to demonstrate methods or develop plans to control or eliminate pollution in the Great Lakes. (Sec. 1258(a))</p>
33 U.S.C. § 1268	Authorizes Great Lakes Environmental Research Laboratory
National Acid precipitation Program Act. (42 U.S.C. § 8901et seq.)	Authorizes establishment of a comprehensive ten-year program to carry out research activities involving acid precipitation resulting from other than natural sources and authorizes the implementation of the National Acid Precipitation Program under the formation of the Acid Precipitation Task Force; also authorizes the NOAA Administrator to serve as the director of the research program.

# OAR ATTACHMENT

**This section is a resource for OAR users. It contains:**

- 1) Acronym List**
- 2) OAR Delegations and Directives - Circular Number 218-01**
- 2) Standardized Labor Distribution Worksheet Procedures.**
- 3) Reimbursable Task Plan TRANSMITTAL FORM (Laboratory Use)**

## ACRONYM LISTING

### A

**AA - Assistant Administrator**  
**AWOL - Absent Without Official Leave**  
**AGC/ADMIN - Office of General Counsel for Administration**  
**ALC - Agency Location Code**  
**ASC - Administrative Support Center**  
**ASTWFS - Advance Short-Term Warning and Forecast Services**

### B

**BSF - Build Sustainable Fisheries**

### C

**CASC - Central Administrative Support Center**  
**CERCLA - Comprehensive Environment Response, Compensation, and Liability Act**  
**CFR - Code of Federal Regulations**  
**CGSA - Coast and Geodetic Survey Act**  
**CO - Contracting Officer**  
**COLA - Cost of Living Allowance**  
**COMMITTS - Commerce Information Technology Solutions**  
**CRADA - Cooperative Research and Development Agreement**  
**CSA - Customer Service Agreement**  
**CZMA - Coastal Zone Management Act**

### D

**D&F - Determination and Findings**  
**DAC - Damage Assessment Center**  
**DAO - Department Administrative Order**  
**DOC - Department of Commerce**  
**DOD - Department of Defense**  
**DOO - Department Organization Order**

### E

**EASC - Eastern Administrative Support Center**  
**EPA - Environmental Protection Agency**  
**EXAD - Executive Direction and Central Administrative Support**

### F

**FACA - Federal Advisory Committee Act**  
**FALD - Federal Assistance Law Division**  
**FAR - Federal Acquisition Regulations**  
**FDMS - Financial Data Management System**  
**FMC - Financial Management Center**  
**FOIA - Freedom of Information Act**  
**FY - Fiscal Year**

## **G**

**GAO - General Accounting Office**  
**GCIL - General Counsel for International Law**  
**GCOS - Assistant General Counsel Ocean Services**  
**GCNR - Assistant General Counsel for Natural Resources**  
**GPO - Government Printing Office**  
**GSA - General Services Administration**

## **I**

**IA - Interagency Agreements**  
**ISICF - Implement Seasonal to Interannual Climate Forecasts**  
**IT - Information Technology**  
**IPAC - Intra-governmental Payment and Collection (formerly OPAC)**

## **J**

**JPA - Joint Project Authority**

## **L**

**LO - Line Offices**

## **M**

**MASC - Mountain Administrative Support Center**  
**MB - Management and Budget**  
**MC - Management Control**  
**MOA - Memorandum of Agreement**  
**MOD - Management and Organizational Development Team**  
**MOU - Memorandum of Understanding**  
**MPRSA - Marine Protection, Research, and Sanctuaries Act**

## **N**

**NAO - NOAA Administrative Order**  
**NESDIS - National Environmental Satellite, Data, and Information Services**  
**NMSA - National Marine Sanctuaries Act**  
**NOAA - National Oceanic and Atmospheric Administration**  
**NOS - National Ocean Service**  
**NSF - National Science Foundation**  
**NSGCP - National Sea Grant College Program**  
**NURP - National Undersea Research Program**  
**NWS - National Weather Service**

## **O**

**OAR - Office of Oceanic and Atmospheric Research**  
**OEAM - Office of Executive Assistance Management**  
**OFA - Office of Finance and Administration**  
**OGC - Office of General Counsel**  
**OGP - Office of Global Programs**  
**OIG - Office of the Inspector General**  
**OMB - Office of Management and Budget**  
**OMI - Office of Management and Information**  
**ONMS - Office of National Marine Sanctuaries**

**OPA - Oil Pollution Act**

**OPAC - On-Line Payment and Collection System (See IPAC)**

**ORTA - Office of Research and Technology Applications**

**P**

**PADCC - Predict, and Assess Decadal-to-Centennial Climate Change**

**POC - Point of Contact**

**PRA - Paperwork Reduction Act**

**PSN - Promote Safe Navigation**

**R**

**RPS - Recover Protected Species**

**RTP - Reimbursable Task Planning**

**S**

**SHC - Sustain Healthy Coasts**

**SLUC - Standard Level User Charges**

**SOW - Statement of Work**

**T**

**T&A - Time and Attendance**

**U**

**USC - United States Code**

**W**

**WASC - Western Administrative Support Center**

## Office of Oceanic and Atmospheric Research (OAR) Delegations And Directives

**Circular Number: 218-01    Effective: December 3, 2001**

**Subject: Policy on Documents Requiring Legal Review**

**Purpose:** To establish new focal point and tracking procedures for NOAA Research documents requiring a legal review

**Background:** NOAA's General Counsel (GC) Office currently provides legal guidance to NOAA Research documents for NOAA Research documents offices. However, the current process does not allow NOAA documents to ensure that NOAA Research program objectives and funding documents to ensure By establishing this policy, NOAA Research will early on, and provide better service.

**This policy designates the Management and Organizational Development (MOD) the responsibility of providing quality control [i.e., reviewing, prioritizing, and approving documents in NOAA Research which require a legal review. documents in NOAA Research which require a legal review are outlined in Attachment 1 and will also be reviewed. review are outlined in Attachment 1: Memorandum of Understanding/Memorandum of Understanding/Memorandum of Understanding available on the web in March 2002.**

**Procedure:** All documents requiring a GC legal review (as outlined above) should be submitted to the MOD Team, OMx1, along with a completed transmittal slip (Attachment 2).

- o The MOD Team will provide a cursory review of the document and, based on program impact (as noted on the transmittal slip and in the agreement), will determine review priority.**
- o The following criteria will be used to determine priority:**

**Priority A**      **Timing of agreement urgent**  
**Significant funding or equipment will be lost if not completed**  
**Other factor dictates urgent review of document**

## GC reviews within one week

**Priority B      Timing of agreement important**  
**Moderate funding or equipment will be lost if not completed**

## GC reviews within two weeks

**Priority C**    **Timing of agreement of moderate importance**  
**Some funding or equipment will be lost if not completed**  
**GC review within one month**

**Priority D**    **Timing not an issue**  
**No funding or equipment involved**

**GC reviews within 1-3 months**

o    **The MOD Team will have the document logged into the NOAA Research control correspondence data base and then document will promptly be delivered to the GC Office for legal review. The MOD Team will review and log these documents within 1-2 days turnaround.**

o    **The GC Office and Program Official responsible for the document being reviewed should maintain direct communications throughout this process in order to resolve any problems.**

o    **The MOD Team will follow up with GC on status. After NOAA GC reviews the OAR document, it will be MOD s responsibility to forward it to the Executive Secretariat s (EXSEC) office for review by the Department of Commerce (DOC) GC. At that time, MOD will obtain the DOC GC attorney s name who is reviewing the document so that regular followup is accomplished.**

o    **After DOC/GC has cleared the document, it will be returned to the MOD Team.**

o    **The MOD Team will close out the document.**

o    **The MOD Team will also follow up with document initiator s from time-to-time to ensure that their documents are still in an active status. Any documents which have not had some type of activity recorded within 30 days will be considered inactive and closed out.**

**Effect on other issuances: This circular supercedes any previous ERL Letters or delegations related to this issue.**

**Approved:**

\_\_\_\_\_ **Date:** \_\_\_\_\_

**David L. Evans**  
**Assistant Administrator, OAR**

**Attachments**



**Attachment 1**  
**Current OAR Document Clearance Requirements**

<b>Document Type</b>	<b>OAR Review</b>	<b>NOAA GC Review</b>	
<b>Agreements</b> <b>Cooperative (Grants)</b>	Required/OAR HQ	Not Required	
<b>Agreements</b> <b>International</b>	Required/International Activities Staff	Required	
<b>Agreements</b> <b>Economy Act</b>	Required/OAR HQ	Required	
<b>Agreements</b> <b>Joint Project Authority</b>	Required/OAR HQ	Required	
<b>Agreements</b> <b>Special Studies</b>	Required/OAR HQ	Required	
<b>Authorized Language</b>	Required/OAR HQ	Required	
<b>CRA Review</b>	Required/ORTA	Required	
<b>Contract Correspondence</b>	Required/OAR HQ	Required	
<b>(Draft) Regulations</b> <b>Testimony</b> <b>Congressional Transcripts</b>	Required/OSS Regulations Office	Required	
<b>Ethics</b>	Not Required	Required	
<b>FAC Review</b>	Not Required	Preliminary Review	
<b>Federal Register Notices</b>	Required/OAR HQ	Required	
<b>Freedom of Information Act</b> <b>Requests (Initial)</b> <b>Appeals</b>	Required/OAR HQ  Not Required	Required  Not Required	
<b>General Requirements</b>	Not Required	Required	
<b>Gifts Received</b> <b>\$25,000 Under Secretary</b>	Required/OAR HQ	Required	
<b>Gifts Received</b> <b>\$25,000 Secretary</b>	Required/OAR HQ	Required	
<b>Patent Review/DOC/Tech Division</b>	Required/OAR HQ /ORTA	Not Required	
<b>33 USC Miscellaneous</b>	Required/OAR HQ	Required	

**Attachment 2**

**SAMPLE TRANSMITTAL SLIP  
DOCUMENT FOR LEGAL REVIEW**

**Date Submitted to MOD:** \_\_\_\_\_

**PRIORITY:** (Use Established Criteria on Delegation of Authority, Circular #218-01)

**DOCUMENT TYPE:** Cooperative Agreement

**TITLE:** \_\_\_\_\_

**FROM:** INITIATOR S NAME AND OFFICE

**DUE DATE:**

**IMPACT IF DUE DATE NOT MET:**

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**TO MOD CORRESPONDENCE CONTROL:** \_\_\_\_\_

**TO NOAA/GC:** \_\_\_\_\_

## Standardized Labor Distribution Worksheet Procedures:

### GENERAL:

These procedures provide guidance for the establishment and use of a biweekly NOAA-wide Standardized Labor Distribution Worksheet. This worksheet will provide a means by which to account fully for actual direct labor hours and costs of employees working on multiple projects. The Standardized Labor Distribution Worksheet procedures should be provided to all employees and timekeepers.

This Labor Distribution Worksheet, or a similar one that contains all supporting information, is designed to document the distribution of direct labor hours and costs of employees working on multiple projects and is used as support for input to the Time and Attendance Daily Report.

Various individuals at different organizational levels are involved in the biweekly timekeeping process. The procedures that individuals must follow are provided below:

### Employee s Responsibilities:

Each employee working on multiple projects is responsible for accurately completing a Labor Distribution Worksheet, signing off, and submitting it to the timekeeper each pay period. Each employee must ensure the accuracy of the Task Numbers and hours on both the worksheet and Time and Attendance (T&A) Daily Report. The employee must notify the timekeeper, in a timely manner, of any discrepancies occurring between the Labor Distribution Worksheet and related statements. Supervisory review and signature of the Labor Distribution Worksheet, prior to completing the official T&A Daily Report, are at the discretion of each Supervisor.

### Supervisor s Responsibilities:

Each supervisor is responsible for reviewing the accuracy and completeness of the information contained on the Labor Distribution Worksheets and is ultimately responsible for ensuring that the data is correctly recorded on the T&A Daily Reports.

### Timekeeper s Responsibilities:

Timekeepers are responsible for promptly recording the Labor Distribution Worksheet data into the payroll system each pay period to enable payment within the payroll processing cycle. Timekeepers must ensure that a Labor Distribution Worksheet has been prepared, completed, and signed off by the employees. The original Labor Distribution Worksheet should be filed with the employee s T&A Daily Report.

# NOAA Transaction Code Description

Prefix	Code	Suffix	Description
	01		Regular Time - Base Pay
97	01		Regular - Scuba Diving
	04		Base Pay with Sunday Differential
97	04		Sunday - Scuba Diving
	05		Base Pay with Sunday Differential with Night
Differential			
	11		Base Pay with Night Differential
	12		Night Differential for Compensatory Time Worked
	13		Night Differential Sunday Double Time
	14		Hazard Pay Differential
	16		Other Pay
	16	1	Penalty Pay Regular (WM)
	16	2	Penalty Pay Premium (WM)
	16	3	Scuba Pay (WM only)
	16	5	Tank Cleaning (WM only)
	16	8	Dirty Work (WM only) Unlicensed, Regular Hours
	19	9	Dirty Work (WM only), Unlicensed Outside Regular Hours
	17		Commute Use Government Owned Automobile
10	17		Mass Transit Subsidy
	17	4	Incentive Pay (dollar entries only)
	17	7	Commuted Subsistence - <i>Do not Use at Present Time</i>
	17	8	Chauffeur Driven Auto
	17	9	Parking Subsidy (dollar entry only)
	19		Overtime Over 8 hours per day within 40 hour week
97	19		Overtime - Scuba Diving 175% (Wage System Only)
	21		Overtime Over 40 hours per week
97	21		Overtime - Scuba Diving 175% (Wage System Only)
	23		Overtime Travel under FLSA
	24		Overtime Travel under Title V
	25		Overtime in excess of 40 hrs./week with night
differential			
	26		Overtime over 8 hrs./day within a 40 hr. week with night differential
	27		Overtime plus 10% of Overtime Rate (Dirty work - Licensed Engineers (WM only)
	29		Credit Hours Earned
	31		Holiday Worked
97	31		Holiday - Scuba Diving 175% (Wage System Only)
	32		Compensatory Time earned in Lieu of Overtime
77	32		Compensatory Time earned for Religious Observance
	35		Regular Time - Basic, Renegotiations or Reopener Negotiations
	36		Regular Time - Midterm Negotiations
	37		Regular Time - On-going Labor-management Relations
	38		Regular Time - Grievances and Appeals
	39		Shore Leave Earned

<b>Prefix</b>	<b>Code</b>	<b>Suffix</b>	<b>Description</b>
	40		Home Leave Earned
	41		Standby/AUO/Availability
	45		Begin Cost of Living Allowance (COLA)
	46		Begin Foreign Post Differential
	47		Discontinue Cost of Living Allowance (COLA)
	48		Discontinue Foreign Post Differential
	49		Remote Worksite Allowance (Dollar entries only)
	49	3	Living Quarters Allowance - Tax Exempt
	49	9	Danger pay Allowance
	50		Credit Hours Used
	51	1	Uniform Allowance - Taxable
	51	2	Separate Maintenance Allowance - Tax Exempt
	51	8	Uniform Allowance - Tax Exempt
	59		Shore Leave Used
	60		Compensatory Time Used - Religious Observance
	61		Annual Leave Used
	61	66	Time Off as Incentive Award
	62		Sick Leave Used
	62	62	Family Friendly Leave Used
	63		Restored Annual Leave Used
	64		Compensatory Time Used
	65		Military Leave - Regular
	66		Other Paid Absences (Holiday, Jury Duty, etc.)
	67		COP Injury Leave Used
	68		Emergency Military Leave
	70		Logging, Forfeiture of Pay (WM only)
	71		Leave Without Pay (LWOP)
	72		Absence Without Official Leave (AWOL)
	73		Suspension from Duty
	74		Furlough
	89		Emergency Salary Payments from Imprest
	91		Quarters Deductions
	92		Deductions for Meals

pah:revised 5/7/99

**REIMBURSABLE TASK PLAN  
TRANSMITTAL FORM**

**[LABORATORY ]  
Acceptance of Sponsored Work  
(Check Applicable Boxes)**

**Section A:**

**OAR Laboratory:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Principal Investigator (s):** \_\_\_\_\_ **Phone No.** \_\_\_\_\_

**Laboratory Contact:** \_\_\_\_\_ **Phone No.** \_\_\_\_\_

**Proposed Sponsor:** \_\_\_\_\_

Federal  
Non-Federal  
Proposal Attached  
Proposal on File

**Period of Performance:** \_\_\_\_\_

**General Guideline(s) for Acceptance of Sponsored Work- All blocks must be checked:**

Performance of the work is consistent with NOAA authorized programs and the general policies of the Federal Government.  
Performance of the work will not adversely affect regular NOAA programs.  
Performance of the work by NOAA is in the best interest of the Federal Government, but is not related to the normal functions of NOAA.  
Performance of the work by NOAA can be done more effectively than by the private sector due to NOAA s unique expertise and activities.

**Legal Authority - See appendix for definition of authorities. One block MUST BE checked:**

The Economy Act of 1932, as amended, (31 USC section 1535)  
The Intergovernmental Cooperation Act (31 USC section 6505)  
The Department's Joint Project Authority (15 USC section 1525, second paragraph)  
The Federal Technology Transfer Act of 1986 (15 USC sections 3710a-3710d)  
User Fees [31 USC 9701]  
Program Authority may exist as a result of Congressional action. Specific authority for another Federal agency to transfer funds to NOAA may be contained in program statutes (e.g. the Clean Water Act), which may be cited as the legal authority for the transfer of funds.  
Special Studies (15 USC 1525, first paragraph)  
Other authority. Cite and describe:

**Strategic Plan Element(s) - One block must be checked:**

Build Sustainable Fisheries (BSF)  
Sustain Healthy Coasts (SHC)  
Advance Short-Term Warning and Forecast Services (ASTWFS)  
Implement Seasonal to Interannual climate Forecasts (ISICF)  
Predict, and Assess Decadal-to-Centennial Climate Change (PADCC)  
Promote Safe Navigation (PSN)  
Recover Protected Species (RPS)  
Infrastructure Multiple - supports several goals.

**National Science Foundation (NSF) - One Block must be checked:**

- 1) Basic Research
- 2) Applied Research
- 3) Development Directed
- 4) NON R&D

**Multiple Project supports several fields of science. You must identify which percent (%) on project requests**

**Field of Science** - Circle at least one field that closely represents the program:

NA -Not Applicable -if NSF codes is 4 -Non R&D

11 Astronomy	42 Astronautical Engineering	61 Biological Psychology
12 Chemistry	43 Chemical Engineering	69 Psychological Science
13 Physics	44 Civil Engineering	71 Anthropology
19 Physical Science	45 Electrical Engineering	72 Economics
21 Mathematics	46 Mechanical Engineering	75 Political Science
22 Computer Science	47 Metallurgy & Material	76 Sociology
29 Math/Computer Science	49 Engineering	79 Social Sciences
31 Atmospheric Science	51 Biological	80 Cryogenics (Nist)
32 Geological Science	54 Environmental Biology	81 Measurement (Nist)
33 Oceanography	55 Agricultural	82 Other Engineering (Nist)
39 Environmental Science	56 Medical	99 Other Science
41 Aeronautical Engineering	59 Life Science	

Multiple Project supports several fields of science. You must identify which percent (%) on project requests

**Budget Information:**

Proposed amount of other agency funds \$ \_\_\_\_\_

Proposed amount of NOAA contribution \$ \_\_\_\_\_

Budget prepared in conformance with authority cited

**Billing Basis:**

Actual Costs

Fixed Price - ( Less than \$15,000)

**Billing Cycle:**

Federal sponsors

Advance

Monthly

Quarterly

At completion

Non-Federal sponsors Advance of Funds

B- Tasks- No year

R - Tasks - Reimbursable that requires a waiver if non-Federal

**WAIVER PROVISIONS - PLEASE NOTE**

Work performed for non-federal sponsors without an advance payment requires the head of the laboratory performing the work to justify the action and submit a written request to OAR Headquarters, who will coordinate and submit for approval to the Office of Finance and Administration, Budget Operations Division prior to accepting the reimbursable work.

The conditions for a waiver request are:

Greater than \$50,000.00

Length of time to complete the work will exceed 6 months.

Payment method for non-federal with an approved waiver is Monthly billing only.

**Section B:**

**Reimbursable Task Number:** \_\_\_\_\_

**Receipt of Order:**

Original signed copy of order attached

Object Class break-out of expenses attached / or RTP Drafted in FIMA .

Reviewed by: \_\_\_\_\_

Administrative Officer

Date

## **FIELD SERVICES REVIEW**

**Received in Field Services Staff**      **Date** \_\_\_\_\_ **Initials** \_\_\_\_\_

**Assigned to Budget Analyst:**      **Date** \_\_\_\_\_ **Initials** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**Cost Sharing Proposal**      **Date** \_\_\_\_\_ **Initials** \_\_\_\_\_  
(If Applicable)

**Package complete**      **Date** \_\_\_\_\_ **Initials** \_\_\_\_\_

**Attorney Review Complete**      **Date** \_\_\_\_\_ **Initials** \_\_\_\_\_

**Returned to Field Services for Distribution**  
**Date** \_\_\_\_\_ **Initials** \_\_\_\_\_

**Acceptance letter Mailed to Sponsor**  
**Date** \_\_\_\_\_ **Initials** \_\_\_\_\_

**COMMENTS/ NOTES:**

**Revised 02/08/02**